

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.255 of 2018
and CMP.No.1431 of 2018

1.Punithawathi Maniyam
2.Sudha
3.Bharathi

.. Petitioners

Vs

M.V.Aruljothi

:: Respondent

PRAYER

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 20.11.2017 made in IA.No.146 of 2017 in OS.No.62 of 2012 on the file of Principal District Judge, Vellore.

For Petitioners : Mr.P.Chandrasekar

For respondent : Mr.B.Sundarapandiyan

ORDER

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According to the revision petitioners, the respondent has filed a suit in OS.No.62 of 2012 on the file of the Principal District Judge, Vellore for specific performance. In the aforesaid suit, the

revision petitioner have filed an application in IA.No.146 of 2017 under Section 45 of the Indian Evidence Act to appoint Advocate Commissioner for the purpose of sending the disputed signature found in Promissory note dated 02.11.2009 which has been marked as Ex.B4 to the Forensic Department of the State of Tamil Nadu, Mylapore, Chennai to obtain a report in respect of the disputed signature. The counter statement has been filed by the respondent. After hearing both the parties, the court below has considered and dismissed the said application by holding that the suit is filed in the year 2012 and after lapse of 5 years from the date of filing of the suit, the revision petitioners have come up with the petition to send Ex.B4 which is not the subject matter of the suit. Challenging the aforesaid order, the revision petitioners have filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioners would submit that if the said application is allowed, no prejudice would be caused to the respondent and also the same will minimise the evidence in the said suit.

3. Per contra, the learned counsel for the respondent

would submit that the court below has dismissed the said application on the ground the aforesaid document is not the subject matter of the suit. Therefore, there is no warrant to interfere with the orders passed by the court below. Hence, the present Civil Revision Petition is liable to be dismissed.

4. Heard, the learned counsel for the revision petitioners and the learned counsel for the respondent and also perused the materials available on record.

5. From the above said facts, the revision petitioners have filed the said application in IA.No.146 of 2017 to refer the document to the forensic department with regard to the disputed signature in the pro-note. The contention of the revision petitioners was rejected by the court below by stating that the said document relied upon by the revision petitioners is not the subject matter of the suit and filed the instant application belatedly.

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6. This Court has already considered and decided in the case of **P.Stanley Buck Vs. D.Govindaraj reported in (2009) 7 MLJ 908**, paragraph Nos.26, 27 and 30 of which are extracted below:-

"26. In **Thiruvengadam Pillai Vs. Navaneethammal and another, 2008 (4) SCC 530: (2008) 2 MLJ 1115**, the issue before the Supreme Court was regarding the observation made by the First Appellate Court about the failure on the part of the Defendants to prove that her signature was forged. By concurring with the views of the High Court, in setting aside the findings of the trial Court, the Supreme Court held thus at p.1124 of MLJ:-

"17. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first Appellate Court reversed it by wrongly placing onus on the Defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the Defendants, it was for the Defendants to establish that the document was forged or concocted, is not sound proposition. The first Appellate Court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the Defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed

an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first Defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses...."

27. In **P.Sood & Co., (Manufacturing) represented by its Partner, Krishna Kumar Sood Vs. Peerchand Misrimalji Bhansali, Prop, Meena Metals, (2005) 2 MLJ 603: (2005) 3 CTC 12**, Division Bench of this Court opined that when the defendant denied the Signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps to ascertain the genuineness of the disputed signature by sending the document to hand writing expert.

30. In **State (Delhi Administration) v. Pali Ram., AIR 1979 SC 14**, the Supreme Court opined that it would be permissible for the Trial Court to send the disputed document for expert opinion even without an application. The relevant paragraph would read thus :-

"Even where no such expert witness is cited

or examined by either party, the court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the court to compare the two writings and arrive at a proper conclusion."

7. Hence, apart from the reasons stated by the court below, when the defendant has denied the execution of pro-note, it is the burden of the plaintiff to prove the genuineness of the document. Therefore, there is no warrant to interfere with the orders passed by the court below and the order passed by the court below is confirmed.

8. In view of the facts and circumstances of the case and the decision cited supra, the Civil Revision Petition fails and accordingly, the same stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Speaking/Non-Speaking order
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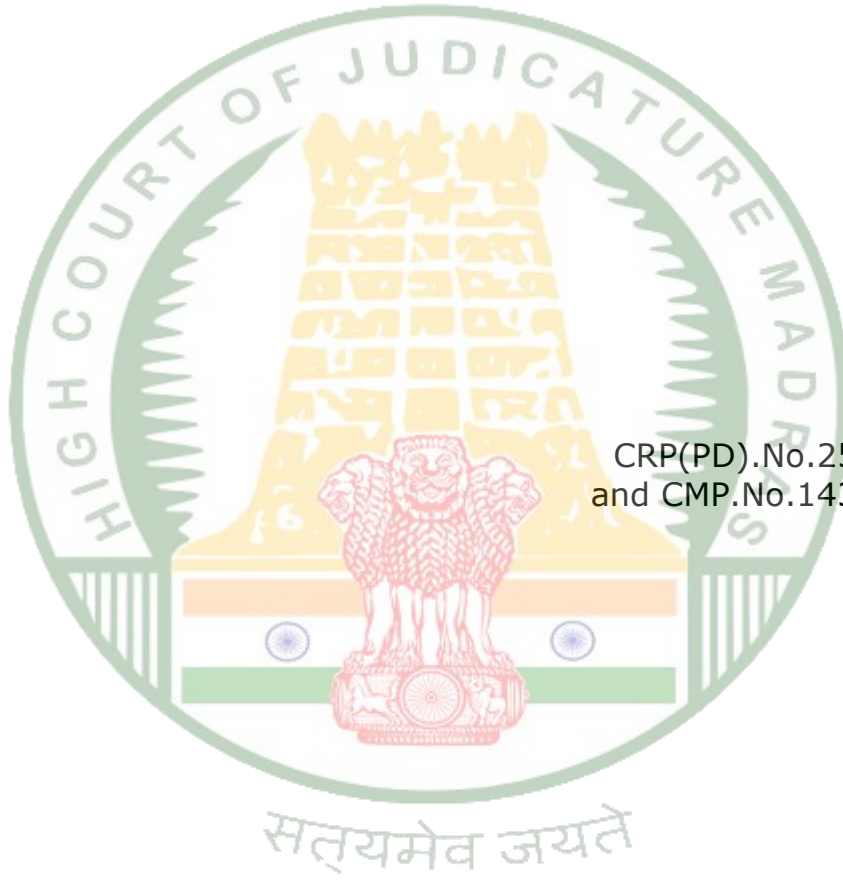
The Principal District Judge,
Vellore.



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D. KRISHNAKUMAR J.,

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