

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P(P.D)No. 2765 of 2018

and

C.M.P.No.16205 of 2018

V.Vijayalakshmi

..Petitioner

-Vs-

D.Annalakshmi

..Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to allow the above Civil Revision Petition and set aside the fair and decreetal order dated 31.01.2018 made in I.A.No.25 of 2017 in A.S.No.55 of 2013 on the file of the I Additional District Judge, Thiruvallur.

For Petitioner : Mr.A.Palaniappan

For Respondent : Mr.C.Jagadhish for Caveator

ORDER

The application against which the present Civil Revision Petition has been filed is an order rejecting the petitioner's request for seeking the signatures of Ex.A.1 for comparison by the handwriting expert under Order 26 Rule 10 (A) of Code of Civil Procedure. The said application has been filed during the pendency of the first appeal.

2. The original suit in O.S.No.25 of 2010 has been filed seeking for a decree of specific performance of sale agreement dated 29.08.2007. The case of the respondent herein is that the petitioner herein has executed the sale agreement on 29.08.2007, agreeing to sell the suit property for a valid sale consideration. The petitioner herein had filed a written statement stating that the respondent herein is a money lender, who had advanced a hand loan of Rs.50,000/-, at which point of time, she had obtained her signatures in blank papers as well as certain stamp papers. In the written statement, she had also alleged that the sale agreement was forged. Subsequently, the suit came to be decreed on 25.02.2012 as against which, the petitioner herein had preferred an appeal in A.S.No.55 of 2013. After more than four years, the petitioner herein had filed an application in I.A.No.25 of 2017, seeking for sending the sale agreement Exhibit A1 to the handwriting expert for comparison of the signature in the sale agreement with certain admitted signature. The reason adduced in the said application is that the agreement is dated 29.08.2007 and the endorsement made therein have been fabricated and that the petitioner herein had never signed or executed the documents as well as the endorsement.

3. Mr.A.Palaniappan, learned counsel for the petitioner submitted that the petitioner herein had raised a specific plea in her written statement

that her signature was forged and that the written statement, since was drafted before the Moffusil Court, requires to be construed liberally, for which purpose he placed reliance on the two Judgments of the Hon'ble Apex Court reported in **2007 9 SCC 641 (Des Raj and others Vs. Bhagat Ram (Dead) by Lrs. and others)** and **2007 11 SCC 736 (Narain Prasad Aggarwal (Dead) by Lrs. Vs. State of Madhya Pradesh)**.

4. According to the learned counsel, the case of the petitioner herein before the trial Court was that the signature in the sale agreement is forged and in view of the specific plea taken in her written statement that there was a duty cast on the respondent herein, who had referred the exhibit to the forensic expert for analysis of the signature. In the absence of the same, the petitioner herein is justified in making out the present application and the first appellate Court was not justified in rejecting the same.

5. Per contra , the learned counsel for the respondent on the other hand submitted that the present application does not deserve any consideration since the application itself has been filed belatedly. According to him, the suit came to be decreed on 25.02.2012 and though the appeal was preferred in the year 2013 itself, there was no explanation as to why the petitioner has chosen to file an Interlocutory Application in I.A.No.25 of 2017,

only on 09.02.2017. Even otherwise, the appeal has been included in the list for final hearing and at this stage the petitioner's request need not be considered.

6. The learned counsel further submitted that the respondent herein had categorically admitted her signature in the written statement and as such there is no duty cast on the petitioner to take out an application to compare the admitted signature.

7. I have heard the submissions made by the respective counsel. In the light of the submissions made by the respective counsel, the written statement filed before the Trial Court was perused entirety. Though the petitioner herein had stated in the written statement that the sale agreement was forged, there are several averments therein, which indicates that the respondent herein had obtained signatures in blank papers, when the petitioner obtained a hand loan of Rs.50,000/- from her. It is also seen from the written statement that the petitioner had admitted that she had signed in certain blank papers and stamp papers. It is the specific case that the respondent herein had taken advantage of her poverty and misused those signed stamp papers for filing the Suit.

8. The learned counsel for the petitioner had relied upon the Judgment of the Hon'ble Apex Court reported in **2007 9 SCC 641 (Des Raj and others Vs. Bhagat Ram (Dead) by Lrs. and others)** which was also relied upon in a subsequent Judgment reported in **2007 11 SCC 736 (Narain Prasad Aggarwal (Dead) by Lrs. Vs. State of Madhya Pradesh)**. The finding of the Apex Court therein is to the effect that a Plaint in Moffusil Court must be liberally construed and the pleadings requires to be taken as a whole. By applying such a ratio and when the written statement was construed in its entirety, I am constrained to hold that the petitioner herein intended to state before the trial Court that she did sign certain papers before the respondent herein when she obtained the loan and there is no indication in the written statement whatsoever to the effect that such a signature was forged by the respondent herein. Though there is a stray averment that the document is forged, on a perusal and appreciation of the entire averments in the written statement, it could only be construed that the petitioner herein never intended to state that her signature was forged by the respondent herein.

9. While that being so, the submission that the onus of referring Exhibit A1 for comparison of the signature therein may not arise since the petitioner had admitted her signature in Exhibit A1. As such, there is no infirmity or procedural irregularity on the part of the petitioner in not having

taken up the application before the trial Court for comparing the signatures in Exhibit A1 with that of the admitted signature of the petitioner.

10. It is not in dispute, the present application has been filed after almost four years from the date of the appeal. There is no explanation also in this regard for the belated filing of the application before the first Appellate Court. The respondent herein had made a submission that it was not his duty to file an application before the trial Court in view of the fact that the petitioner had admitted her signature and such a necessity does not arise for the respondent to file an application. Even otherwise, the delay in filing the application before the first Appellate Court also would be fatal to the petitioner herein.

11. In this context, the Learned Counsel for the respondent relied upon two Judgment of this Court reported in **2012(3) MWN (Civil) 494 (Muthukumar Vs. Shanmugham)** and **2006(4) CTC 850 (N.Chinnasamy Vs. P.S.Swaminathan)**. The relevant portions of the said Judgments read as follows:

- (i) **2012(3) MWN (Civil) 494 (Muthukumar Vs. Shanmugham):**

" 19. A perusal of the Written Statement filed by

the Petitioner/Defendant, in paragraph 8, indicates that his father Shanmugam expired on 21.4.1999 and after his demise, the Respondent/Plaintiff on 13.5.1999 has come to the Petitioner/Defendant and informed that his father Shanmugam has taken a loan of Rs.1,00,000/- from him, for which, his father had executed two pronotes in favour of Respondent/Plaintiff and when a demand has been made for return of the amount, the Petitioner/Defendant has requested for two months time and the Respondent/Plaintiff handed over two Pronotes signed by Shanmugam to the Petitioner/Defendant and the Respondent /Plaintiff has come to the Petitioner/Defendant and demanded immediate payment of Rs.1,00,000/- failing which the Petitioner/Defendant has been asked to sign in a blank paper, which has been refused by the Petitioner/Defendant. Subsequently, the Petitioner/Defendant has put his signature in a blank paper out of compulsion of the Respondent/Plaintiff.

20. The clear-cut case of the Petitioner/Defendant, as set out in the Written Statement, is that the Respondent/Plaintiff has utilised the blank document and he

has created a forged Sale Agreement and has filed the present Suit. Also, the Petitioner/Defendant has pleaded that the Plaint schedule properties are valued about more than Rs.20,00,000/- and there is no necessity for him to sell the property for a value of Rs.3,00,000/-

21. In the instant case on hand, the Petitioner/Defendant has specified, in the Written Statement, the circumstances under which he has affixed his signature in the blank paper. Therefore, there is no dispute as to the signature of the Petitioner/Defendant in the sale agreement. Obviously, the dispute centers around the manner in which the Petitioner/Defendant has affixed his signature in the blank paper and also the allegation made by the Petitioner/Defendant that the Respondent/Plaintiff has created forged sale agreement utilising the blank signature. These allegations/factual aspects of the matter raised by the Petitioner/Defendant, in the considered opinion of this Court, will have to be taken note of by the Trial Court along with the evidence of witnesses tendered at the time of trial of the main suit. Also, the opinion of Handwriting Expert alone is not a guiding or deciding factor in finding out the

veracity of the Sale Agreement dated 8.5.1999. The contentions of the Petitioner/Defendant could be put the acid test of examination of attestors to the Sale Agreement and also, it is open to the Petitioner/Defendant to prove his case in some other methods. Further, it is the primordial duty of the Respondent/Plaintiff to substantiate his case by letting in oral and documentary evidence encircling the facts and circumstances of this case. "

(ii) 2006(4) CTC 850 (N.Chinnasamy Vs. P.S.Swaminathan)

32."From the above Judgments, the following principles have emerged:

(1) Section 73 of the Indian Evidence Act authorizes the Court to compare the disputed signature with the admitted signature in order to come to its own conclusion.

(2) It is always safe for the Court to take the aid of handwriting expert to have the expertise to scientifically compare such handwriting with reasons.

(3) The practice of sending original documents in the custody of the Courts to the handwriting experts is a highly objectionable one and a very bad procedure.

(4) The proper procedure would be to permit the handwriting expert to inspect the document in the Court premises itself in the presence of some responsible officers of the Court.

(5) If necessary, the expert may be permitted to have photographic copies of documents in the presence of the responsible officers of the Court.

(6) When examination of the disputed documents within the Court's premises, is not possible due to genuine difficulties expressed by the expert, the Court has to find out the alternative way of achieving the object for the purpose of doing justice.

(7) In such circumstances as mentioned above, the Application has to be treated as an Application for an appointment of the commissioner in whose presence the examination of the disputed document has to be conducted by the expert.

(8) When the investigation cannot be conveniently conducted within the premises of the Court and the same has to be carried out in the laboratory of the Forensic Department of the Government of Tamil Nadu, it is necessary

to appoint a commissioner to conduct the investigation of the document in his presence.

(9) Filing Application for examination of documents by handwriting expert at a late stage thereby protracting and holding up the proceedings is highly objectionable.

(10) Merely because of the reasons that the Trial Court has by itself compared the admitted signature and the disputed signature invoking Section 73 of the Indian Evidence Act there is no bar or ban for the First Appellate Court for sending the documents to get the expert opinion.

(11) Expert opinion could give much more clarity for arriving at a decision upon the truth and genuineness of a disputed document.

(12) When the defendant denies the signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps for examination of the disputed signature by sending the documents to a handwriting expert."

12. The above observations are self explanatory. As observed above, the petitioner herein having admitted her signature in the written statement

and in view of the fact that there is no explanation as to why the application came to be filed after four years from the date of filing of the appeal, I am constrained to hold that there is no infirmity in the order passed by the First Appellate Court in I.A.No.25 of 2017. In the absence of any merit in the present revision, the same is liable to be rejected. Accordingly, the Civil Revision Petition stands dismissed. Consequently connected Miscellaneous Petition is closed. No costs.

13. It is made clear that the observations made in the present order is only for the purpose of disposing of this Civil Revision Petition and none of the observations made herein shall have a barring on the outcome of the first appeal.

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Index: Yes/No

Internet: Yes/No

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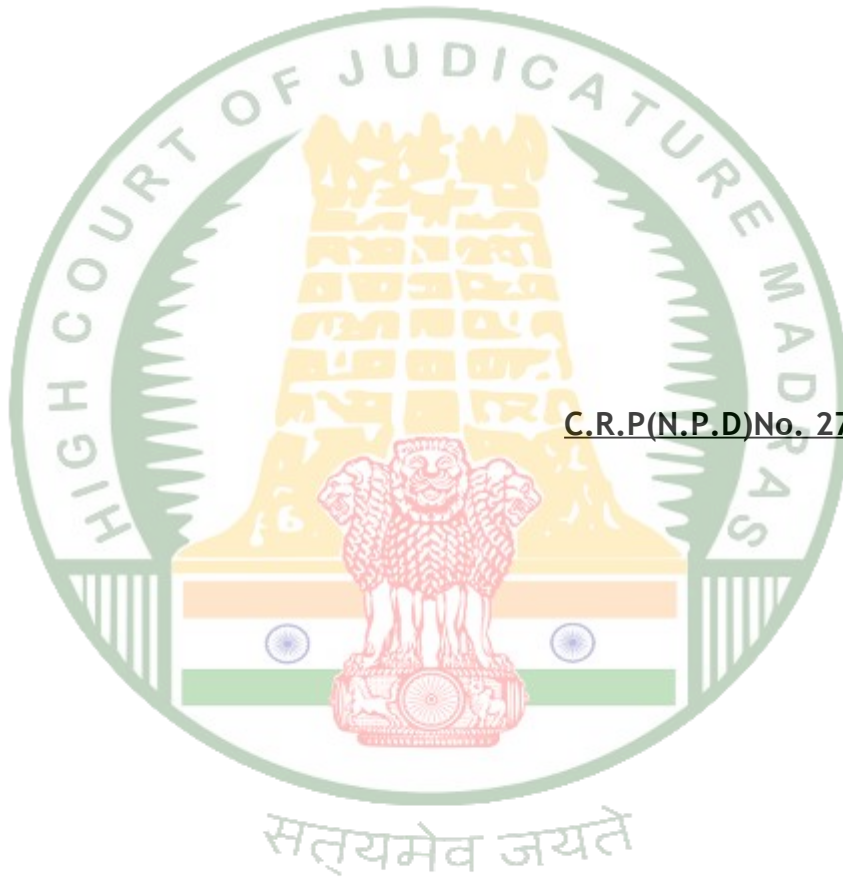
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To

I Additional District Court,
Thiruvallur

M.S.RAMESH,J.

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