

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION(PD) No.904 of 2018
and C.M.P.No.4910 of 2018

1.R.Lakshmi

2.R.Devaraj

.. Petitioners

vs

N.Saraswathi

.. Respondent

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 18.01.2018 passed in I.A.No.307 of 2017 in O.S.No.854 of 2013 pending on the file of the Principal Subordinate Judge, Coimbatore.

For Petitioners ... Mr.K.Venkatasubban

For Respondent ... Mr.D.Shanmugavel

ORDER

The Civil Revision Petition has been filed against the fair and final order dated 08.01.2018 passed in I.A.No.307 of 2017 in O.S.No.854 of 2013 pending on the file of the learned Principal Subordinate Judge, Coimbatore.

2. According to the petitioners, the respondent filed a suit in O.S.No.854 of 2013 on the file of the learned Principal Subordinate Judge, Coimbatore against the petitioners seeking to direct the defendants to pay a sum of Rs.5,42,575/- with interest at the rate of 12% per annum. In the aforesaid suit, the petitioners filed a written statement. Subsequently, the petitioners filed an application in I.A.No.307 of 2017 under Order 26 Rule 10A and 10B and Section 151 of CPC r/w Section 45 of the Indian Evidence Act, 1872 to appoint an Advocate Commissioner to send the petition mentioned documents to the Director, Forensic Science Laboratory, Mylapore, Chennai to verify and compare the signature of 'Devaraj' and the thumb impression of 'Lakshmi' found in document No.1 namely, Ex.P.1 and to compare the same with that of the signature, 'Devaraj' and the thumb impressions of 'Lakshmi' found in document Nos.2 and 3 namely, Ex.D.1 and D.2 to issue suitable directions to the departments to verify and compare and the said application was dismissed on 08.01.2018.

3. The learned counsel for the petitioners/defendants submitted that the respondent/plaintiff denied Ex.A.1, pro-note allegedly executed by the petitioners as it is forged and fabricated by the respondent. Therefore, the petitioners filed the present application

before the Court below with the aforesaid prayer. The Court below, without considering the facts and circumstances of the case, erroneously dismissed the application. Hence, the impugned order passed by the Court below is liable to be set aside.

4. Per contra, the learned counsel for the respondent/plaintiff submitted that the respondent, while filing the suit, marked Ex.A.1-pro-note. The learned counsel further submitted that it is the duty of the respondent to prove the document of Ex.A.1. Further, the petitioners filed the present application at the belated stage. Therefore, the Civil Revision Petition is liable to be dismissed.

5. Heard, submissions made by the learned counsel for both sides and perused the materials available on record.

6. Considering the facts and circumstances of the case and submissions made by the learned counsel for both sides and in the light of the decision in the case of ***P. Stanley Buck Vs. D. Govindaraj*** reported in (2009) 7 MLJ 908, wherein it is held as follows:

“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."

In the light of the above decision, there is no scope to interfere with the impugned order passed by the Court below, and accordingly, the order passed by the Court below is confirmed.

D.KRISHNAKUMAR,J.
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In the result, the impugned order passed in I. A. No.307 of 2017 in O.S.No.854 of 2013 dated 08.01.2018 by the learned Principal Subordinate Judge, Coimbatore is confirmed. The Civil Revision Petition stands dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

08.03.2018

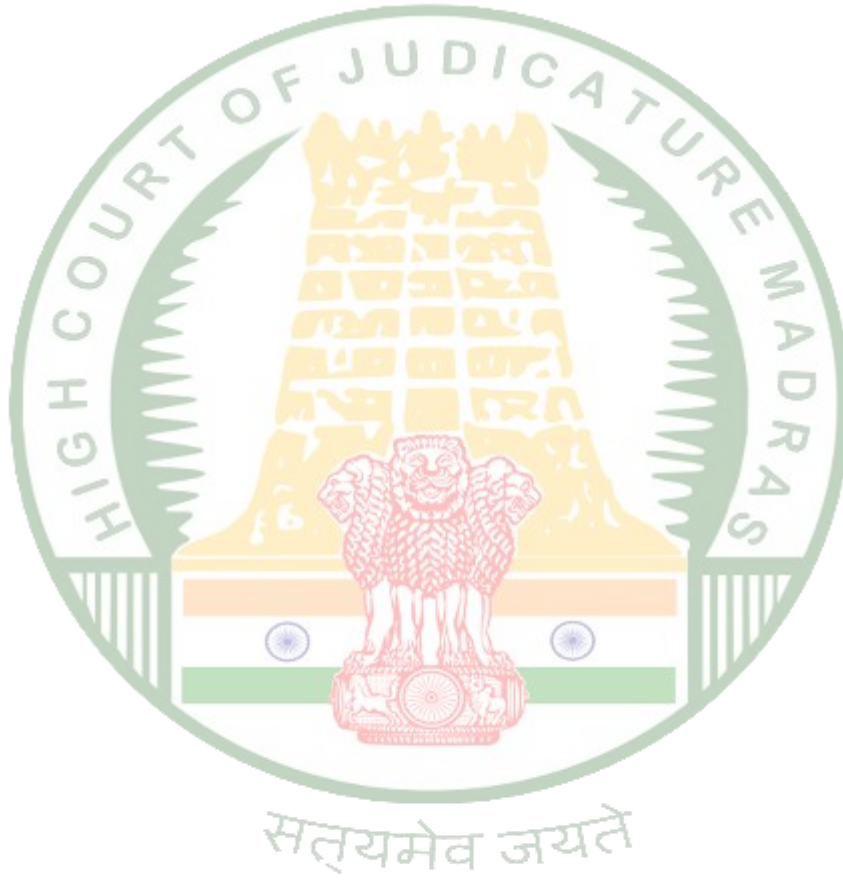
Speaking/Non Speaking order
Index: Yes/No.

Note to Office:
Issue order copy on 14.03.2018

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To
The Principal Subordinate Judge,
Coimbatore.

**C.R.P.(PD)No.904 of 2018
and C.M.P.No.4910 of 2018**



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Date: 21.02.2018

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