



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.472 of 2018

and

C.M.P. (MD) No.2102 of 2018

A.Ramaiah ... Petitioner/Petitioner/Respondent/Plaintiff

-vs-

V.Subbulakshmi ... Respondent/Respondent/Appellant/Defendant

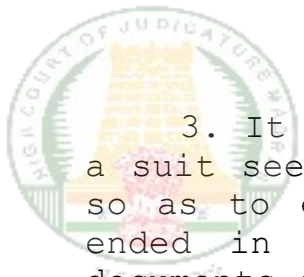
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 10.01.2018 passed in I.A.No.90 of 2017 in A.S.No.47 of 2013 by Principal District Court, Tirunelveli, thereby allowing the civil revision petition with costs .

For Petitioner : Mr.S.Anand Chandrasekar
For M/s.Sarvabhauman Associates
For Respondent : No Appearance

O R D E R

For the sake of convenience, the parties would be referred to as per their nomenclature mentioned in this petition.

2. The revision petitioner is the plaintiff in the suit and the respondent in the appeal in A.S.No.47 of 2013 on the file of the Principal District Court, Tirunelveli and the suit was decreed in favour of the plaintiff, against which, the defendant preferred an appeal. Subsequently, the defendant preferred an appeal in A.S.No.47 of 2013, which was allowed by the learned Principal District Judge, Tirunelveli and aggrieved by the same, the plaintiff/revision petitioner herein has again filed CMA(MD) No.455 of 2015 before this Court, and this Court, after hearing both sides, allowed the Civil Miscellaneous Appeal and remanded the matter to the First Appellate Court for fresh consideration. During pendency of the same, the revision petitioner herein took out an application in I.A.No.90 of 2017 for sending the Ex.X1 and postal acknowledgment card to the Forensic Science Lab, Madurai for comparison of signature with Ex.A1 and to get a report. The said application was dismissed by the Trial Court, on the ground that adding further documents will not be helpful to prove the signature as found in Ex.A1, aggrieved by which, the present revision petition has been filed.



3. It is the case of the revision petitioner that he had filed a suit seeking for the relief of specific performance of contract so as to enforce the agreement for sale dated 15.11.2007, which ended in his favour. Though in CMA(MD) No.455 of 2015, some documents were sought to be filed for comparison, those documents were not accepted on the ground that those were not contemporary documents. The petitioner, in order to substantiate that the signature found in Ex.A1 is that of the respondent and also to arrive at a conclusion regarding the genuineness of Ex.A1, had placed much reliance on Ex.X1, a copy of notice served on respondent and the Trial Court, without granting any chance to the petitioner, had simply dismissed the application, which needs re-consideration by this Court.

4. Heard the learned counsel for the petitioner and there is no representation on behalf of the respondent, despite the fact that the matter is posted today "For Orders". This Court also perused the entire material documents available on record.

5. Admittedly, the revision petitioner had filed a suit for specific performance and succeeded in it and in the appeal stage filed by the defendant, a petition was filed for sending the documents for comparison, which was dismissed by the First Appellate Court, stating that the said exercise would only extend the scope of the suit, instead of arriving at a definite finding. The yet another reason for such denial is that the postal acknowledgment card was not marked as a document in the earlier suit. It is to be noted that under Section 75(e) of the Code of Civil Procedure, the Court is empowered to issue commission to hold a Scientific, Technical or Expert investigation and as per the provisions of Rule 10-A, a discretion is vested with the Civil Court to get any scientific investigation conducted only if it thinks necessary or expedient in the interest of justice. This Court in the case of **M.Venkataswamy (deceased) vs. Mythira Devi**, reported in **2017 (2) CTC 79** has observed that the basic rationale of the provisions is that if the opinion of the Scientific Investigation is going to help in extracting the truth and determining the controversy raised in the dispute before the Court, then such an investigation could be permitted. The basic idea is whether such Scientific Investigation is going to advance the cause of justice and would be necessary for adjudication for the rights of the parties.

6. Moreover, a reading of Section 73 of Evidence Act contemplates that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.



7. It is the repeated contention of the petitioner that in the suit filed by his mother in O.S.No.192 of 2008 before the Additional Sub Court, Tirunelveli against the very same respondent for partition, the respondent had received the Court notice by putting her signature thereon and if that signature is sent for getting an expert opinion, then the entire truth will be unfolded. Ultimately, the main object of the Civil Court is to bring the exact cat out of the bag, for which, it is absolutely nothing wrong in sending the documents for comparison.

8. However, the Trial Court has not gone into all these aspects and has simply dismissed the application without considering the purpose as well as the importance of the petition, which, in the considered opinion of this Court, is not sustainable. In addition, the respondent has also not entered appearance to put forth her contention as to why such documents should not be sent for comparison.

9. Hence, in view of the foregoing discussions and observations and finding force in the contention raised by the petitioner, this Court is of the view that the order dated 10.01.2018 passed in I.A.No.90 of 2017 in A.S.No.47 of 2013 by Principal District Judge, Tirunelveli is liable to be set aside

10. In the result,

a) this civil revision petition is allowed and the order dated 10.01.2018 passed in I.A.No.90 of 2017 in A.S.No.47 of 2013 by the learned Principal District Judge, Tirunelveli, is hereby set aside;

b) the learned Principal District Judge, Tirunelveli is directed to send Ex.X1 and the Postal Acknowledgment Card filed along with the petition for comparison of signature with Ex.A1 to the Forensic Science Lab, Madurai, within a period of one month from the date of receipt of a copy of this order, for getting a report;

c) on receipt of the report, the learned Principal District Judge, Tirunelveli is directed to dispose of A.S.No.47 of 2013 within a period of two months thereafter by conducting the case on day to-day basis without giving any unnecessary adjournment to either parties and both the parties shall render their fullest cooperation for disposal of the suit within the time stipulated supra.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)



To:

1. The Principal District Judge,
Tirunelveli.

2. The Officer In-Charge,
Forensic Science Lab, Madurai.

3. The Record Keeper, VR Section, (2copies)
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M/s.Sarvabhauman Associates, Advocate Sr.No.70772

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VB/SKN/SAR2/10.09.2018/4P/6C

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