



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2018

CORAM:

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.2398 of 2015
and
M.P. (MD) .No.1 of 2015

Maheswari

... Petitioner/Petitioner/
2nd Defendant

Vs.

S.Ayya Nadar (Died)
1. Mariammal
2. Sangarapandian
3. M. Nagalakshmi
4. M. Sangareeswari
5. S. Ambigavathi
6. A. Senbagaraj
7. A. Mareeswari

... Respondents/Respondents/
Plaintiffs

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and order dated 31.07.2015 passed in I.A.No.16 of 2014 in O.S.No.4 of 2010 on the file of the Subordinate Court, Virudhunagar.

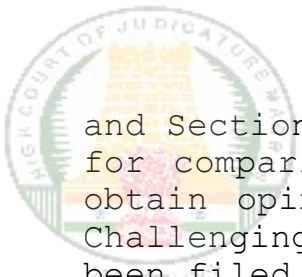
For Petitioner	:	Mr.V.Meenakshisundaram
For R2 & R6	:	Mr.G.Mariappan
For R3 & R4	:	Mr.V.Sasikumar
For R1, R5&R7	:	No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 31.07.2015 passed in I.A.No.16 of 2014 in O.S.No.4 of 2010 by the learned Subordinate Judge, Virudhunagar.

2. Head the learned counsel for the petitioner and the learned counsel for the respondent Nos.2,3,4 and 6 and perused the materials placed before this Court.

3. The respondents are the plaintiffs and the petitioner is the second defendant in the suit in O.S.No.4 of 2010 before the Subordinate Court, Virudhunagar, for recovery of money. During the pendency of the said suit, the petitioner/second defendant has filed an application in I.A.No.16 of 2014 under Order 26 Rule 9 and 10(2)



and Section 151 of CPC., for appointment of an Advocate Commissioner for comparison of the signatures through a Handwriting expert and obtain opinion. The said application was dismissed on 31.07.2015. Challenging the said order, the present Civil Revision Petition has been filed.

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4. During the course of argument, the learned counsel for the petitioner was directed to file an affidavit to produce any other document for comparison along with pro-note. Now, the petitioner has filed the undertaking affidavit dated 10.07.2018, in which, Paragraph No.4 is extracted hereunder:

"I further submit that apart from the above said documents on 22.11.2004, I have purchased a house properly bearing Door No.11, Vivekanandar Street, Virudhunagar from one Tmt.R.Ananda, W/o.Sv.P.Ravi. The said document was registered and the document No.3495/2004. Now, I got two Stagg Housing Loan from Indian Overseas Bank, Virudhunagar Branch under Loan Nos.660500003 and 660500004 dated 22.11.2004 and I availed a sum of Rs.3,50,000/- part consideration of the sale amount. The original of the sale deed is under the custody of the Bank in which my signatures are available and I am ready to summon the same deed and the related loan documents and also my signatures available at Joint sub Registrar-II Office at Virudhunagar related to the registration of the said document. This Hon'ble Court may be pleaded to record these undertakings and pleased to pass suitable orders."

5. The learned counsel for the respondent vehemently opposed that the pronote was of the year 2007, whereas the petitioner, as per his undertaking, proposed to produce the sale deed, which is of the year 2004, more precisely, 22.11.2004. Therefore, that cannot be a document to compare the signature found in the alleged pronote.

6. This Court finds that the said sale deed is of the year 2004 whereas the pronote is of the year 2007 and the difference between these two documents is of three years, which is not a much difference. Therefore, this civil revision petition is allowed and the order dated 31.07.2015, passed by the learned Subordinate Judge, Virudhunagar in I.A.No.16 of 2014 in O.S.No.4 of 2010, is hereby set aside and the trial Court is directed to appoint an Advocate Commissioner for comparison of the signatures of the second defendant with the pro note along with Document dated 22.11.2004 and the petitioner is directed to call for the said document, which is pending before the Bank, which has already been mortgaged by the petitioner, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such sale deed, the learned Judge is directed to appoint Advocate Commissioner and send for comparison of signatures in both the pro-note as well as the sale deed and file a report within a period of four weeks thereafter. On filing of such report, the trial Court is directed to dispose of the



suit in O.S.No.04 of 2010, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Virudhunagar.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- + 1 CC TO Mr.D.NALLATHAMBI, ADVOCATE IN SR No. 72473
- + 1 CC TO Mr.G.MARIAPPAN, ADVOCATE IN SR No. 72224
- + 1 CC TO Mr.V.SASIKUMAR, ADVOCATE IN SR No. 72331

NS

TE/PN/SAR-4 : 20/07/2018 : 3P/7C

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