



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (PD) (MD) No.1287 of 2018
and
CMP(MD)No.5439 of 2018

S.Backyalakshmi

...Petitioner/Petitioner/Defendant

Vs.

P.Ganesan

...Respondent/Respondent/Plaintiff

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 04.06.2018 made in I.A No.1347 of 2017 in O.S No.108 of 2016 on the file of the District Munsif Court, Melur.

For Petitioners: Mr.T.K.Gopalan for
Mr.P.T.S.Narendravasan

For Respondent : Mr.J.Barathan for Mr.T.R.Jeyapalam

ORDER

O.S No.108 of 2016 on the file of the District Munsif Court, Melur was instituted by the respondent herein against the revision petitioner herein seeking the relief of permanent injunction. According to the revision petitioner who is the defendant in the said suit, she is a cultivating tenant in respect of the suit property. The revision petitioner claims that the respondent herein has affixed signatures categorically in the rental receipts. This claim is stoutly denied by the respondent herein. Therefore, the revision petitioner filed I.A No.1347 2017 for appointing an Advocate Commissioner for obtaining forensic opinion in this regard. The court below by order dated 04.06.2018 dismissed the said I.A. Challenging the same, this civil revision petition came to be filed.

2.Heard the learned counsel on either side.

3.This Court had a look at the counter affidavit filed by the respondent herein. The respondent even while formally opposing the I.A, has taken a stand that the disputed signatures will have to be compared with the admitted signatures. But the court below undertook an examination of the disputed signatures on its own. The court below felt that the disputed signatures do not even tally with one another. The court below has given as many as



7 reasons for dismissing the I.A. They are found at Page No.8 of the impugned order. The court below appears to have been more swayed by the direction given in CRP PD (MD)No.1835 of 2017 for conclusion of the suit proceedings on or before 19.06.2018.

4.It is true that as contended by the learned counsel appearing for the respondent, the trial court does have the power and jurisdiction to undertake an examination on its own as per Section 73 of the Indian Evidence Act, 1873. But then, in several cases, it has been held that a Judge not being an expert ought not to undertake such an exercise. In this case, though the suit in question is one for injunction, the revision petitioner claims that she is a cultivating tenant and she is in possession of the suit property. The best evidence to establish this claim would be to mark the rental receipts of the landlord.

5.When the landlord denies and disputes the signature attributed to him, in the very nature of things, the matter will have to be sent for opinion of the handwriting expert. The parties are entitled to make a request to the court to make such a reference and appoint an Advocate Commissioner for the said purpose. Merely because a direction for speedy disposal has been given, the valuable rights of the parties cannot be taken away. Of course, as rightly pointed out by the learned counsel appearing for the respondent, the opinion has to be obtained only by comparing the disputed signature with an admitted signature. Therefore, the court below will undertake the exercise by finding out if there is any admitted signature of the respondent that is also contemporaneous in nature is available. In such an event, if the court below is satisfied that there is an admitted signature, the disputed signature can be sent for forensic opinion. If no such admitted signature that is also contemporaneous in nature is available, the question of sending the disputed signature for expert opinion will not arise.

6.In this view of the matter, the order impugned in this civil revision petition is set aside and the matter is remitted to the file of the court below to pass orders afresh in accordance with the terms of the directions now given in this order.

7.This Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-I)



To

The District Munsif, Melur.

+ 1 CC TO MR.T.R.JEYAPALAN, ADVOCATE IN SR NO.90704

+ 1 CC TO MR.P.T.S.NARENDRAVASAN, ADVOCATE IN SR NO.90678

SKM

BU/SKN/SAR-I :26.10.2018 : 3P/4C

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