

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(PD).No.1425 of 2011  
and  
M.P.No.1 of 2011

G.Ravichandran ... Petitioner

vs.

V.Devendiran ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 08.11.2010 made in I.A.No.22 of 2006 in O.S.No.973 of 2004 on the file of Principal District Munsif Court at Vellore, Vellore District.

For Petitioner : Mr.S.Mukunth

For Respondent : Mr.P.Sankaranarayanan

ORDER

The revision petitioner is the defendant in OS.No.973 of 2004 on the file of the Principal District Munsif, Vellore District.

2. The respondent/plaintiff filed the above suit for recovery of money from the revision petitioner/defendant due under a Promissory Note. The revision petitioner/defendant filed a written statement contending that the Promissory Note is a rank forgery. After settlement of issues, both the parties went for trial. The revision petitioner/defendant filed IA.No. 22 of 2006 in O.S.No.973 of 2004 praying to send the Promissory Note along with a document filed with the application in IA.No.22 of 2006 to compare the signature found in Promissory Note and the signature found in the document by a hand writing expert. The learned Principal District Munsif, Vellore District, after analysing the evidence on record dismissed the application on the following grounds:

(i) The court can itself compare the signatures found in the suit Promissory Note and other records and there is no need for appointing an Advocate Commissioner to take the Promissory Note for getting the opinion of an hand writing expert.

(ii) The present application is filed only to protract on the proceedings.

3. Aggrieved over the orders dated 08.11.2010, passed by the learned Principal District Munsif, Vellore District the defendant filed the present Civil Revision Petition.

4. Mr.S.Mukunth, learned counsel appearing for the revision petitioner/defendant relied on the decision of this Court in **Chandran Udayar vs. Kasivel** reported in (2008) 3 MLJ 897 and contended that the court should not function as an expert to compare the disputed signature on the Promissory Note. He further relied on the decision in **V.P.Sankaran vs. R.Uthirakumar** reported in 2009 (6) CTC 29 and contended that referring the suit Promissory Note to the wisdom of hand writing expert is inevitable, especially, when the defendant has disputed the signature on the Promissory Note in his written statement.

5. *Per contra*, the learned counsel appearing for the respondent/ plaintiff relied on the decision in **R.Sarvanan vs. R.N.Peruvazhuthi** reported in 2009 (5) CTC 593 and contended that court could resort to comparison of signatures and arrive at its own conclusion when other materials produced and evidence adduced are corroborative of such comparison. He would further contend that in the instant case, the respondent/plaintiff and other

witnesses have not been examined and if at all a court comes to a conclusion that sending the Promissory Note for expert opinion is inevitable, then the court can send the Promissory Note along with the admitted signature after the execution of witness on the side of the respondent/plaintiff. His specific contention is that the petition filed by the revision petitioner/defendant at this stage is premature.

6. A perusal of the written statement shows that the revision petitioner/defendant has taken a specific plea that the suit Promissory Note is a forged document. The respondent/plaintiff did not take steps to file a petition to compare the signature of the revision petitioner/defendant found on the Promissory Note with the admitted signature of the revision petitioner/defendant. However, there is no legal bar to prevent the court from comparing the signatures or hand writing by using its own eyes to compare the disputed signature with the admitted signature and prove the said signatures to be the same or different as the case may be, but, in doing so, the court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the court may also not be conclusive. Therefore, when the court takes such a task upon itself and findings are recorded solely on the basis of comparison

of signatures or hand writing, the court must keep in mind the risk involved as the opinion found by the court may not be conclusive and is susceptible to error, especially, when the exercise is conducted by one not conversant with the subject. The apprehension of the respondent/plaintiff that the application seeking expert's opinion has been filed only to protract on the proceedings is baseless because the burden of proof lies only on the respondent/plaintiff to prove that the signature found in the Promissory Note is that of the signature of the revision petitioner/defendant. Furthermore, the revision petitioner/defendant has also filed a document along with the application to compare his signature. Therefore, the trial court has committed an error in dismissing the application filed by the revision petitioner/defendant.

7. The trial court is therefore directed to send the Promissory Note and the document filed along with the application through an Advocate Commissioner. The trial court is also directed to provide for sufficient safeguards for taking disputed documents or summon the expert to the court to do the exercise of comparison. The entire process including the filing of an expert's opinion should be completed within a period of two months from the date of receipt of a copy of this order.

R.HEMALATHA, J.

mbi

8. With the above observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

18.06.2019

mbi

Index : Yes/No

To

The Principal District Munsif Court,  
Vellore,  
Vellore District.



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