

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. R.HEMALATHA

CRP NO.989 and 990 OF 2012

and

M.P.No1 of 2012 in CRP NO.989 of 2012

Natarajan ... Petitioner in both revision petitions
Vs.

Vijaiyakumari Respondent in both revision petitions

PRAYER IN CRP 989 OF 2012: Civil Revision petition filed under Article 227 of the Constitution of India against the orders dated 19.08.2011 passed in I.A.No.677 of 2011 in O.S.No.514 of 2010 by the Additional District Munsif, Namakkal.

PRAYER IN CRP 990 OF 2012: Civil Revision petition filed under Article 227 of the Constitution of India against the orders dated 07.12.2011 passed in I.A.No.951 of 2011 in O.S.No.514 of 2010 by the Additional District Munsif, Namakkal.

For Petitioner : Mr.T.Dhanyakumar
(in both revision petition)

For Respondent : Mr.R.Subramanian
(in both revision petition)

COMMON ORDER

The revision petitioner is the plaintiff in O.S.No.514 of 2010 on the file of the Additional District Munsif, Namakkal. He filed the said suit against the respondent/defendant for recovery of amount due under a promissory note. The defendant filed a written statement denying all the allegations of the plaintiff. The learned Additional District Munsif, Namakkal, framed necessary issues and both the parties went for trial. The plaintiff examined himself as PW1 in O.S.No.514 of 2010. During the course of cross examination, a stamped receipt was

shown to the revision petitioner/plaintiff and he admitted his signature found on the stamped receipt. Therefore, the said stamped receipt was marked as Ex.B1. Thereafter, the present revision petitioner/plaintiff filed two applications in I.A.No.677 of 2011 and I.A.No.951 of 2011 in O.S.No.514 of 2010 for the following reliefs.

1. to send the stamped receipt, marked as Ex.B1 for the opinion of the hand writing expert and
2. to receive reply statement filed by him.

The learned Additional District Munsif, Namakkal dismissed both the applications and aggrieved over the said orders, the present revision petitions are filed by the plaintiff.

2. Mr.T.Dhanyakumar, learned counsel appearing for the revision petitioner contended that Ex.B1, the stamped receipt is a forged document and therefore the revision petitioner filed petitions to receive his reply statement, denying the execution of Ex.B1 and also to send the said document Ex.B1 for expert's opinion. According to him, a perusal of the signatures of the plaintiff found in the vakalath and plaint with the stamped receipt Ex.B1 would clearly go to show that the signature found on Ex.B1 is not the signature of the plaintiff.

3. Per contra, Mr.R.Subramanian, learned counsel appearing for the respondent would contend that the reply statement was sought to be filed after the cross examination of PW1 and that when the plaintiff himself admitted his signature on Ex.B1, there is no necessity for the court to send the document for expert's opinion. His further contention is that the plaintiff cannot be permitted to introduce a new case by way of filing a reply statement, that too after the examination of the plaintiff as PW1.

4. It is clear from the records that the stamped receipt was shown to the plaintiff (PW1), when he was in the witness box and he admitted his signature on the said document. Therefore, it was marked as Ex.B1. Thereafter, the plaintiff wanted to file a reply statement by contending that the signature found on Ex.B1 is not his signature and that he did not execute Ex.B1. It is pertinent to point out that the plaintiff himself had admitted his signature on Ex.B1. Hence, the plaintiff cannot be permitted to file his reply statement by raising an objection to the document Ex.B1, subsequent to his cross examination. The learned Additional District Munsif, Namakkal had clearly held in I.A.No.951 of 2011 that since the plaintiff himself admitted his signature on Ex.B1, there was no necessity to send the said document for expert's opinion. Such an observation made by the trial court cannot be found fault

with. Similarly, in I.A.No.677 of 2011, in paragraph 7, the learned Additional District Munsif, Namakkal had observed thus.

7. The petitioner has come forward with this petition to receive the reply statement, which is filed belatedly. The averments in the affidavit is that the stamped receipt marked by the respondent through cross examination of PW1 is false and the signature found in the receipt is the forged signature, therefore to establish the same, the opinion of the expert is just and necessary. But the prayer in the petition is that to receive the reply statement, filed belatedly. Therefore, the affidavit and petition prayer is entirely different (i.e) the prayer in the petition is to receive the reply statement filed by the petitioner belatedly, whereas the prayer in the affidavit reveals that the petitioner sought for expert opinion. Therefore, the petitioner has filed this petition without knowing the relief which is to be sought in the interlocutory application. Even though it is assumed that this petition is filed for the prayer sought in the petition, this petition to receive the reply statement filed after the completion of PW1 cross examination is not maintainable. From the affidavit, it would reveal that to disprove the admitted document by the PW1 in his cross examination, this application has been filed. Moreover, the petitioner had sufficient opportunity to file his reply statement after filing the written statement has been filed on 21.02.2011 and the trial begins on 20.06.2011 and PW1 was cross examined in full on 28.06.2011. Therefore for nearly 4 months, the petitioner has kept quiet without filing the reply statement. Only after cross examination of PW1, the petitioner has come forward with this petition, will go to show that is is nothing but to fill the lacuna caused during cross examination. Therefore, at this stage, this petition is not maintainable. Hence the point for consideration is answered accordingly.

The above observation of the trial court are well founded and the revision petitioner/plaintiff cannot be permitted to fill up lacuna in his case by way of filing a reply statement, that too after the cross examination of the plaintiff as PW1. Hence, both the civil revision petitions are liable to be dismissed.

8. In the result, C.R.P.No.989 of 2012 and C.R.PNo.990 of 2012 are dismissed. No costs. Consequently, connected miscellaneous petition is closed. The learned Additional District Munsif, Namakkal is directed to dispose off the suit in O.S.No.514 of 2010, within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mst

To

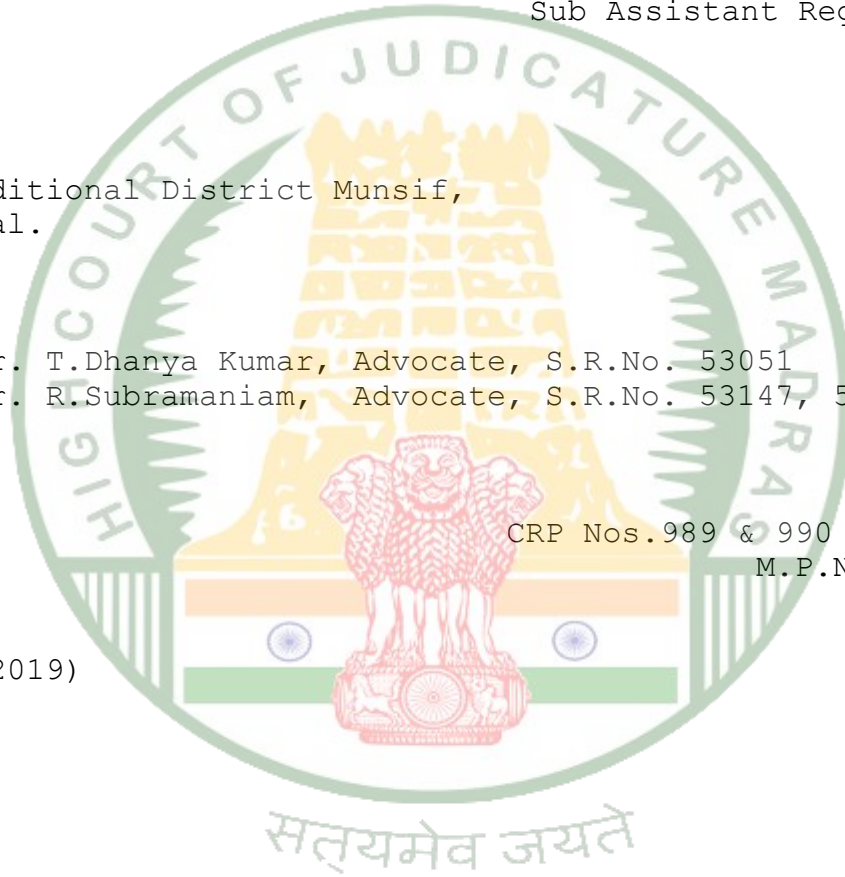
1. The Additional District Munsif,
Namakkal.

+1cc to Mr. T.Dhanya Kumar, Advocate, S.R.No. 53051

+2cc to Mr. R.Subramaniam, Advocate, S.R.No. 53147, 53146

CRP Nos.989 & 990 of 2012 and
M.P.No.1 of 2012

GJ II(CO)
GN(05/08/2019)



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