

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2019

PRONOUNCED ON : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (NPD).No. 892 of 2015

and

M.P.No. 1 of 2015

Velmurugan

.. Petitioner

vs

K.M.Chadrasedkar

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and final order dated 19.12.2014 passed in I.A.No.415 of 2013 in A.S.No.76 of 2011 on the file of the III Additional District and Sessions Judge, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.P.Jagadeesan

ORDER

The petitioner is aggrieved by the impugned fair and final order dated 19.12.2014, passed by the III Additional District and Sessions Judge, Salem in I.A.No.415 of 2013 in A.S.No.76 of 2011.

2. By the impugned order dated 19.12.2014, the III Additional District and Sessions Court, Salem has rejected the above application filed by the petitioner (the Judgment debtor) seeking to refer the promissory note for examination of signature and for comparison.

3. This application was filed by the petitioner in A.S.No.76 of 2011 against the Judgment and decree dated 28.09.2010 after execution proceedings were initiated by the respondent in pursuance of the Judgment and decree dated 28.09.2010.

4. The petitioner had earlier filed I.A.No.137 of 2007 in O.S.No.25 of 2006 to examine the signature and the thumb impression affixed on the subject promissory note. The application was allowed by the Trial Court and the materials were forwarded to the Tamil Nadu Finger Print Bureau (TNFPB).

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5. Later, by communication dated 17.09.2008, the Superintendent of Police, TNFPB, informed the Trial Court that the thumb impression cannot be examined in view of the smudging of the thumb impression and stated that as far as the signature was concerned the documents should be sent to

the Assistant Director, Tamil Nadu Forensic Science Department (TNFSD), Chennai – 4 for opinion. In the examination report, it has been stated as follows:

“The finger impression marked as “D” is unfit for comparison and opinion as it is highly smudged, indistinct and does not reveal sufficient number of clear ridge details.”

However, no steps was taken to sent the Promissory Note to the Assistant Director, Tamil Nadu Forensic Science Department (TNFSD), Chennai – 4 for opinion.

6. Only after filing the appeal, the petitioner filed I.A.No.415 of 2013 for referring the signature in the promissory note for examination by a Finger Print Expert at the Office of the Assistant Director, TNFSD, Chennai – 4.

7. By the Impugned order, the III Additional District and Sessions Court had dismissed the application on the ground that, no fresh application was filed by the petitioner after the papers were returned by the Finger Print Bureau and that the petitioner had not filed any documents for admitted signature and for examination.

8. Heard, the learned counsel appearing for the Petitioner and the learned counsel appearing for the Respondent.

9. The learned counsel for the respondent submits that if there is an interference at this stage by referring the case for examination by the Finger Print Expert, it may not be possible to cross-examine the respondent in the belated stage. The petitioner has not given any explanation as to why he did not take steps earlier.

10. The learned counsel for the petitioner referred the decision of this Court in the case of D.Janaki Vs S.Jayalakshmi, 2012 (2) CTC 410 where in in paragraph (13), it was held that

13. It is the primary duty of the Court to form an opinion after getting such an opinion and that is the scope of Section 45 of the Indian Evidence Act. The court also referred to the decision of the Hon'ble Supreme Court in **State of H.P vs Jai Lal and Others**, AIR 1999 SC 3318, wherein it was held as follows:-

The scientific opinion evidence, if intelligible, conviction and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions.

11. I have considered the arguments advanced on behalf of the petitioner and the respondent.

12. Appeal is a continuation of the original proceeding in suit. Under Order 41 Rule 27 of CPC, parties are not entitled to produce additional evidence whether oral or documentary at the appellate stage except under the circumstances specified therein. Whenever the appellate Court requires any additional document or any witness to enable it to pronounce judgment, or for any other substantial cause, it has to record its reason for allowing production of additional evidence at the appellate stage.

13. In this case, the petitioner is not to be fully blamed as indeed the petitioner had earlier taken out an application for getting an opinion of an expert and the subject promissory notes was for examination of the signature and the thumb impression by an expert.

14. However, the expert returned the promissory note with the observation that the thumb impression in the promissory note was smudged and therefore cannot be examined. While returning the promissory note, the

expert had specifically stated that the document should be sent to the Forensic Department for getting opinion of a handwriting expert for the signature.

15. Therefore, the trial Court ought to have suo motto re-sent the promissory note for examination by an expert in the Forensic Science Department. The trial Court however did not sent the promissory note for re-examination.

16. Though the petitioner had an opportunity to file a fresh application for sending the documents for examination by a handwriting expert before the Trial Court, the petitioner did not choose the option by filing a fresh application for such exercise. However, it did not preclude the Trial Court to send the promissory note for an opinion of a handwriting expert to arrive at a fair conclusion on the facts.

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17. In *Ajit Savant Majagvai v. State of Karnataka*, (1997) 7 SCC 110 the Court held that “As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or

handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act.”

18. Be that as it may, no prejudice or harm would be caused to the respondent if the subject promissory note is sent for examination by a handwriting expert from the Forensic Science Department, Chennai as prayed for by the petitioner under section 45 of the Indian Evidence Act, 1872.

19. After all, the trial Court ought to have either relied on Section 73 or 45 of the Indian Evidence Act, 1872 while coming to conclusion regarding the genuine of the signature on the promissory note. Between the two options, evidence of an expert from the field is preferable than a subjective satisfaction of the Court.

20. Therefore, impugned order passed by the 3rd Additional District Sessions Judge, Salem deserves to be set aside. Consequently, the present Civil Revision Petition is allowed. The 3rd Additional District Sessions

Judge, Salem shall appoint an Advocate Commissioner to carry the subject promissory note for examination by a handwriting expert from the Forensic Science Department, Chennai fixing reasonable time line to complete the exercise. Needless to state the petitioner has to bear all the expenses in connection with the said exercise.

21. This exercise can be completed within a period of 3 months from date of receipt of this order. The 3rd Additional District Sessions Judge shall thereafter proceed to pass final order in the appeal within a period of 6 months thereafter.

22. Accordingly, the present Civil Revision Petition stands allowed. No cost. Consequently, connected miscellaneous petition is closed.

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24.07.2019

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To
III Additional District and Sessions Judge,
Salem.

C.SARAVANAN, J.

arb/kkd



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