

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(PD).No.4635 of 2013
and
MP.No.1 of 2013

1.Sarasu

2.Sundar Ganesh

3.Kavipriya

...Petitioners

vs.

R.V.Rajamurugan

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 11.09.2013 passed in IA.No.613 of 2013 in OS.No.307 of 2011, on the file of the Principal District Munsif, Tindivanam.

For Petitioners : Mr.M.R.Kuyilan

For Respondent : Mr.J.Karthikeyan

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ORDER

The petitioners are the defendants in OS.No.307 of 2011 on the file of the Principal District Munsif, Tindivanam.

2. The respondent/plaintiff filed the above suit for recovery of money from the revision petitioners/defendants due under a Promissory Note. The revision petitioners/defendants filed a written statement contending that the Promissory Note is a rank forgery and both the parties went for trial. The respondent/plaintiff examined himself and two other witnesses and also closed his side of evidence. When the suit was posted for defendants evidence, the defendants filed IA.No.613 of 2013 praying to send the Promissory Note along with the document filed with the application in IA.No.613 of 2013 to compare the signatures found in both the documents by a hand writing expert. The learned Principal District Munsif, Tindivanam after full contest dismissed the application on the following grounds:

(i) The revision petitioners/defendants did not take any steps to compare the signatures found on the Promissory Note till the closure of evidence on the side of the respondent/plaintiff and the application in IA.No.613 of 2013 is filed only to protract the proceedings.

(ii) Since, the burden of proof lies on the respondent/plaintiff, the application filed by revision petitioners/defendants is liable to be dismissed.

3. Mr.M.R.Kuyilan, learned counsel appearing for the revision

petitioners/defendants relied on the Single Bench decision of this Court in **Saharban Beevi vs. S.Mumtaj** reported in **2013(1) MWN (Civil) 658** and contended that when the revision petitioners/defendants averred that the suit Promissory Note is a forged document and filed an application in IA.No.613 of 2013 to compare the signatures of the revision petitioners/defendants on the Promissory Note with their admitted signatures found in the document filed along with application in IA.No.613 of 2013, it is the duty of the court to send those documents for an expert's opinion. He would also contend that the courts should not take the task of comparing the signatures.

4. *Per contra*, the learned counsel appearing for the respondent/plaintiff would contend that the respondent/plaintiff apart from examining himself as PW1, examined two more witnesses and all of them categorically deposed about the execution of Promissory Note by the defendants and that the application in IA.No.613 of 2013 is filed by the revision petitioners/defendants at the fag end of the trial only to protract the proceedings.

5. In the written statement, the revision petitioners/defendants

have 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 signatures of the revision petitioners/defendants found on the Promissory Note with the admitted signatures of the revision petitioners/defendants. 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 signatures with the admitted signatures to 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 the proceedings is baseless because the burden of proof lies only on the respondent/plaintiff to prove that the signatures found on the Promissory Note are that of the signatures of the revision petitioners/defendants.

Therefore, the trial court has committed an error in dismissing the application filed by the revision petitioners/defendants.

6. The trial court is directed to obtain contemporary documents from the revision petitioners/defendants and send the same with the Promissory Note 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.

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

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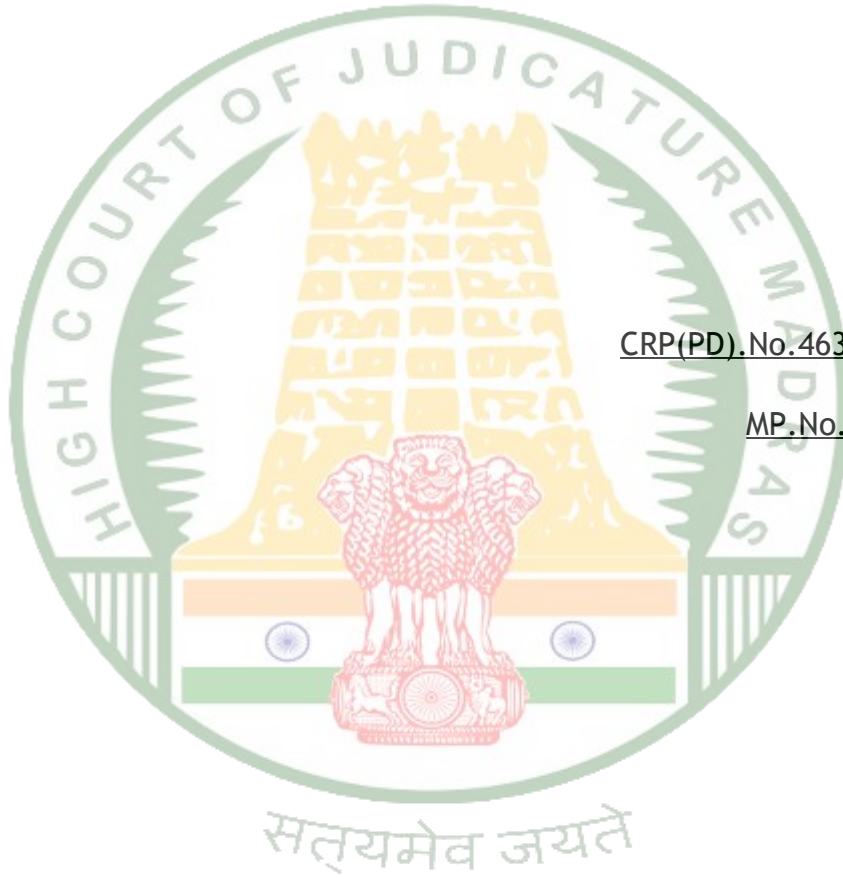
Index : Yes/No

R.HEMALATHA, J.

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To

1.The Principal District Munsif,
Tindivanam.



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