

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.4770 of 2013

and

Miscellaneous Petition No.1 of 2013

1.S.Subaramani

2.S.Senthil

Petitioners/Defendants

Vs

S.P.S.Veera Reddy

Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 19.08.2013 made in I.A.No.10026 of 2012 in O.S.No.14148 of 2010 on the file of the IV Assistant City Civil Court, Chennai.

For Petitioners : Mr.A.K.Venkatesan

For Respondent : Mr.V.Suryanarayana Reddy

ORDER

This Civil Revision Petition has been directed against the order passed in I.A.No.10026 of 2012 in O.S.No.14148 of 2010 on the file of the IV Assistant City Civil Court, Chennai.

2 The petitioners herein are the defendants in O.S.No.14148 of 2010 pending on the file of the above referred Court. Before the said Court the respondent herein filed a suit as against this revision petitioners, seeking the relief to direct the defendants to pay a sum of Rs.1,39,407/- to the plaintiff together with interest at 24% per annum on the principle sum of Rs.1,00,000/- from the date of plaint till the date of realization. The averment made in the plaint shows that the said suit has been filed based on the pro-note. During the pendency of the trial, the defendants filed an application under Order 26 rule 9 of Civil Procedure Code in I.A.No.10026 of 2012 praying to send the promissory note dated 04.01.2005 to the Forensic Laboratory department, Chennai and to call for the report in respect of the writings, endorsement and signatures of the parties.

3 The learned IV Assistant Judge City Civil Court, Chennai after affording an opportunity to the respondent/plaintiff allowed the application vide order dated 19.08.2013. As against the said order, the petitioners/defendants in the I.A., has filed this Civil Revision Petition to set aside the order dated 19.08.2013.

4 In respect to this Civil Revision Petition, the learned

counsel appearing for the petitioner/first defendant would contend that even after knowing the fact, the signature found in the endorsement was admitted by the petitioner the learned trial Judge came to a different conclusion that, for the limited purpose, it is necessary to send the suit schedule pro note for getting expert opinion from the Forensic Department. Further, he has stated that the learned trial Judge allowed the I.A.No.10026 of 2012 for the purpose of examining the signature of the second defendant found in the front page of the suit promissory note, though no reasonable and convincing reasons were given for examination of the first defendant's signature found in the endorsement dated 03.12.2007. According to him, order dated 19.08.2013 passed in I.A.No.10026 of 2012 is erroneous in law.

5 On the other hand, the learned counsel appearing for the respondent would contend that before the trial Court, only the petitioners filed the interlocutory application to send the suit promissory note for comparing the writings, endorsement and signature. The learned 4th Assistant Judge, Chennai has also concluded the said application in favour of the petitioners. Even after allowing the said application in favour of the petitioner, the same has been challenged by the petitioners themselves.

6 The submissions made by the learned counsel appearing on either side are considered.

7 Before the trial Court, in the affidavit filed in support of the petition by the petitioner they only prayed to send the pro note dated 04.01.2005 to the Forensic Laboratory Department, Chennai and to call for the report in respect of the writings, endorsement and signature of the parties. The said application filed by the petitioner under Order XXVI Rule 9 C.P.C., has been allowed by the learned IV Assistant Judge, Chennai. However, in the order passed, it was stated as though in the written statement filed by the first defendant, signature of the first defendant was admitted by him as true one, he would state that after signing the promissory note, he has paying Rs.2,000/- to the plaintiff every month regularly towards interest. It is also contended that at the time of signing the promissory note, the contents found in the pro-note were not filled up and the first defendant alone signed both on the revenue stamp and on other open space available in the promissory note.

8 On the other hand, in the same written statement, it has been stated that the 2nd defendant has nothing to do with the suit

transaction and since the alleged signature of the first defendant alone is found in the reverse side of the suit promissory note. Hence the plaintiff cannot proceed against the 2nd defendant. However, it is the case of the petitioner that both the defendants borrowed a sum of Rs.1,00,000/- from the plaintiff on 04.01.2005 and executed the promissory note promised him to repay the said sum with interest. The said averments reveal that the 2nd defendant has also executed a promissory note. Though, it is a duty of the plaintiff to prove the signature of the defendants, considering the fact that the petitioners/defendants have filed an application to examine the suit pro note, so on considering the nature of the document, the petition filed by the petitioners was allowed by the Court below.

9 The petitioners have now approached this Court by way of filing this Civil Revision Petition even after knowing that the application filed by them was allowed by the learned 4th Assistant Judge in favour of them. So, filing of the Civil Revision Petition is nothing but abuse of process of law. As such, in the impugned order passed by the learned 4th Assistant Judge, no material irregularity was found. Therefore, this Civil Revision Petition fails and the same is dismissed. Consequently, connected M.P., is closed.

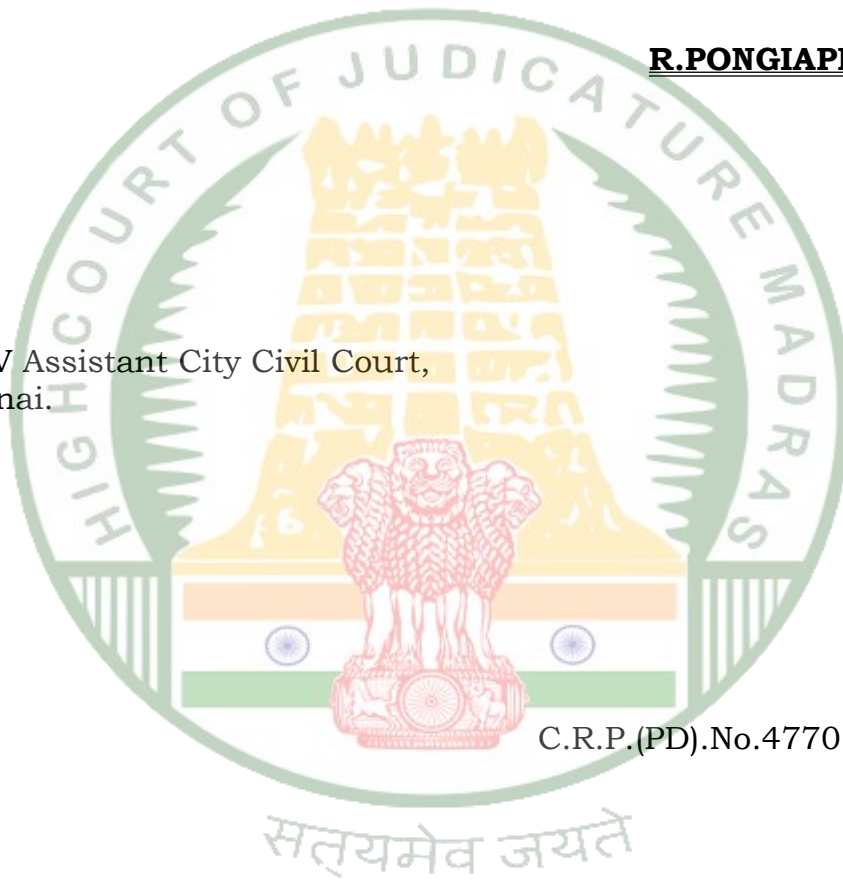
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R.PONGIAPPAN, J.,
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To

1. The IV Assistant City Civil Court,
Chennai.



C.R.P.(PD).No.4770 of 2013

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