

C.M.P.No.9189 of 2019

in

SA.No.2067 of 2001

P.RAJAMANICKAM, J.

This petition has been filed by the appellant/2nd defendant under Section 151 of the Civil Procedure Code, to send the documents Ex.B1 (Registered Power of Attorney dated 30.08.1990) and Ex.A1 (Registered Partition Deed dated 11.05.1989) to the handwriting expert to compare the signatures found in Ex.A1 with the signatures found in Ex.B1 and to get the report.

2. According to the petitioner, the 1st respondent/plaintiff and his father had executed a registered power of attorney dated 30.08.1990 in favour of the 3rd respondent/3rd defendant authorising him to obtain loan. Its further case is that based on the said power of attorney, the 3rd defendant had obtained a loan from the appellant-2nd defendant by creating equitable mortgage over the suit property and subsequently, the borrowers did not repay the amount and hence the suit property was brought for auction sale and in the auction sale, the suit property was sold to the 2nd respondent. Its further case is that after knowing the same, 1st respondent/plaintiff filed a suit in O.S.318 of 1996 alleging that the said power of attorney is a forged one and he did not sign in the said document; however the Trial Court has dismissed the suit, but on appeal, the First Appellate Court has allowed the appeal and hence it has become necessary for the 2nd defendant to

file the second appeal. Its further case is that after executing Ex.B1 General Power of Attorney, with a view to defraud the petitioner corporation, the plaintiff has taken a false plea as he has not executed Ex.B1 General Power of Attorney and therefore the said document has to be sent to the handwriting expert along with Ex.A1 Partition Deed for comparison of the disputed signatures of the plaintiff found in Ex.B1 with the admitted signatures of the plaintiff found in Ex.A1 and get the report and then only the petitioner/appellant can prove its case.

3.The respondents 4 to 6 opposed this petition by filing counter. According to them, this petition is highly belated. The suit was filed in the year 1996 and disposed of in the year 1999 and first appeal was allowed on 28.11.2000 itself and the second appeal filed in the year 2001. It is their further case is that nearly after 18 years the present application is filed belatedly. It is their further case that in the said power of attorney no power was given to give collateral security and hence, no useful purpose will be served by sending the documents to the handwriting expert and therefore they opposed this petition.

4.The Seventh respondent also opposed this petition by filing counter. According to her, sending of Exs.A1 and B1 to the handwriting expert would not serve any purpose because the handwriting expert's opinion is not a conclusive proof.

5. Heard the learned counsel appearing for the petitioner/appellant, the learned counsel appearing for the respondents 4 to 7 and perused the materials available on record.

6. The learned counsel appearing for the petitioner/appellant has submitted that since the petitioner/appellant is a public sector undertaking, and public money is involved, an opportunity may be given to the petitioner to get handwriting expert's opinion. He further submitted that the Trial Court has dismissed the plaintiff's suit on the ground that the plaintiff has failed to take steps for getting handwriting expert's opinion. He further submitted that in the appeal memorandum filed before the First Appellate Court, the plaintiff has categorically stated that he has no objection for getting handwriting expert's opinion, but the First Appellate Court without getting handwriting expert's opinion, has allowed the appeal. He further submitted that if the handwriting expert's opinion is obtained that would not cause any prejudice to the respondents and on the contrary it would help the Court to decide the issue as to whether the plaintiff and his father executed Ex.B1 Power of Attorney and based on the said Ex.B1, the 3rd defendant has obtained loan from the petitioner corporation and therefore he prayed to allow this petition.

7. The learned counsel appearing for the respondents 4 to 6

has submitted that this petition is highly belated. He further submitted

that the suit was filed in the year 1996 and the same was disposed of in the year 1999 and the first appeal was disposed of in the year 2000 and second appeal is pending from the year 2001 and after 18 years belatedly this petition has been filed and therefore he prayed to dismiss the petition.

8.The learned counsel appearing for the 7th respondent has submitted that the opinion of the handwriting experts is not final and conclusive and therefore no useful purpose will be served by sending the documents to the handwriting expert after 18 years and therefore he prayed to dismiss the petition.

9.The case of the petitioner is that the 1st respondent/plaintiff and his father namely T.V.Venkatesan had executed a registered power of attorney dated 30.08.1990 in favour of the 3rd defendant. The said power of attorney has been marked as Ex.B1. In the said document, it is clearly stated that they authorized the 3rd defendant to mortgage the suit property and obtain a loan. According to the petitioner, based on the said authorization, the 3rd defendant obtained a loan of Rs.2,70,000/- from the petitioner corporation. Its further contention is that since the said amount was not repaid, the suit property was brought for sale and in the auction held by the petitioner corporation, the 2nd defendant has purchased the property for Rs.1,70,000/- on 04.02.1999. Its further case is that after knowing

the said fact, the plaintiff with a view to defraud the petitioner corporation, had filed a suit in O.S.No.318 of 1996 on the file of the District Munsif, Hosur, to declare that he is the absolute owner of the suit property and also for permanent injunction. The learned District Munsif, Trial Court, Hosur by the judgment dated 22.01.1999 has dismissed the said suit. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.12 of 1999 on the file of Sub- Judge, Hosur. The learned Sub-Judge by the judgment dated 28.11.2000 allowed the said appeal and set aside the judgment and decree passed by the Trial Court. Aggrieved by the same, the 1st defendant has filed the second appeal in S.A.No.96 of 2001 and the 2nd defendant has filed the second appeal in S.A.No.2067 of 2001.

10.The Trial Court has observed in its judgment that since the plaintiff has come to the court for the relief of declaration and permanent injunction the burden is upon him to prove that the Ex.B1 Power of Attorney was not executed by him and his father, but he failed to take steps to get experts opinion and hence he is not entitled to the relief of declaration and permanent injunction. Accordingly, she dismissed the said suit. Aggrieved by the same the plaintiff has filed an appeal. The First Appellate Court has held that since the second defendant has relied upon Ex.B1/Power of Attorney, the burden is upon the second defendant to prove that the said Ex.B1/Power of Attorney was executed by the plaintiff but the 2nd defendant failed to

take steps to get the expert's opinion and hence, the plaintiff is entitled to get decree as prayed for.

11.It is to be pointed out that in the appeal memorandum filed by the plaintiff in A.S.No.12 of 1999 in para 12, he has specifically stated that he is ready to accept the challenge to send the Exs.B1 and A1 to the finger print expert so that the truth will come out. But, the First Appellate Court has not directed the parties to send the said documents either to handwriting expert or finger print expert. Since, the petitioner is a public sector undertaking, for the interest of the justice this Court is of the view that experts' opinions have to be obtained to find out the truth.

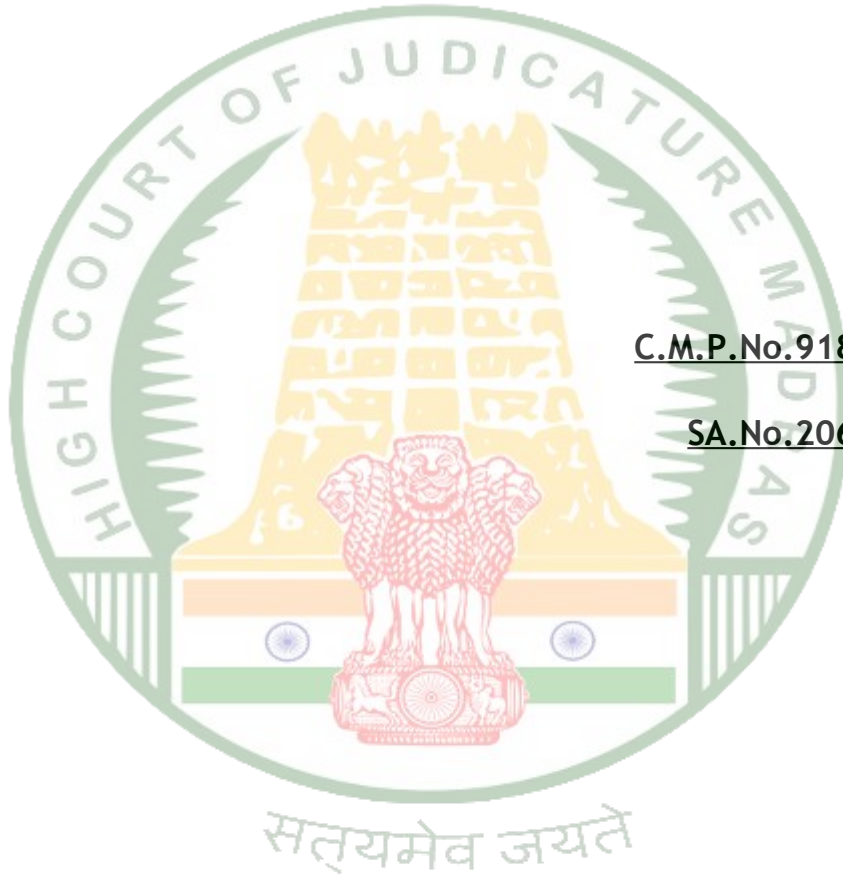
12.In this case, the plaintiff has disputed the signature and thumb impression found in Ex.B1. He produced a partition deed said to have been executed between himself and his father dated 11.05.1989 and marked the same as Ex.A1, So it is clear that in the said Ex.A1 the admitted signature and thumb impression of the plaintiff are available. The said admitted signature and thumb impression of the plaintiff can be compared with the disputed signature and thumb impression found in the Ex.B1/General Power of Attorney dated 30.08.1990. Though the petitioner, in this petition prayed to compare the disputed signature with the admitted signature of the plaintiff, since disputed and admitted signatures thumb

impressions are available, this Court is of the view that the report of handwriting expert and also finger print expert can be obtained. Hence, this Court inclined to allow this petition.

13. In the result this petition is allowed, the petitioner is directed to deposit a sum of Rs.15,000/- towards initial expenses within two weeks from the date of receipt of a copy of this order. Mr.M.Guruprasad, Advocate is appointed as a Commissioner. His fee is fixed at Rs.10,000/-. Registry is directed to take xerox copy of Exs.A1 and B1 and certify as true copies and retain the same. Registry is further directed to send Exs.A1 and B1 to the Tamil Nadu Government Forensic Sciences Department in a sealed cover through the Advocate Commissioner. The Advocate Commissioner is directed to take the said documents in the sealed cover and produce the same before the Tamil Nadu Forensic Sciences Department for comparison of the disputed signatures and thumb impression of the plaintiff which are found in Ex.B1 with the admitted signature and thumb impression found in Ex.A1 and send reports and after completing the process, he has to get back the documents from the concerned laboratory and produce the same before the Registry. Registry is directed to list the matter after getting the expert's opinion.

P.RAJAMANICKAM, J.

rst



C.M.P.No.9189 of 2019
in
SA.No.2067 of 2001

WEB COPY

22.04.2019