

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)Nos.3049 & 3050 of 2014

and
M.P. Nos.1 and 1 of 2014

Sathyanarayanan ... Petitioner in both CRPs.

Vs

Kathar Beig Saibu ... Respondent in both CRPs

Prayer in CRP (NPD) No.3049 of 2014

Civil Revision Petition filed under section 115 of the Civil Procedure Code to set aside the order dated 26.02.2014 passed in I.A. No.25 of 2014 in A.S. No.86 of 1996 on the file of the Additional Subordinate Judge, Tindiavanam and allow the C.R.P.

Prayer in CRP (NPD) No.3050 of 2014

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order, dated 05.12.2013 passed in I.A. No.188 of 2013 in A.S. No.86 of 1996 on the file of the Additional Subordinate Judge, Tindiavanam

For Petitioner in both CRPs

: Mr.R.Sunil Kumar

For Respondent in both CRPs

: Mr.S.Shaji Paul

COMMON ORDER

The Civil Revision Petitions have been filed challenging the order dated 26.02.2014 passed in I.A. No.25 of 2014 in A.S. No.86 of 1996 and orders dated 05.12.2013 passed in I.A. No.188 of 2013 in A.S. No.86 of 1996 by the learned Additional Subordinate Judge, Tindivanam, respectively.

Brief facts leading to the filing of these Revision Petitions are as follows :-

2. The petitioner is the appellant in A.S. No.86 of 1996 pending on the file of the learned Additional Subordinate Judge, Tindivanam. He filed the suit viz., O.S. No.983 of 1995 before the learned Principal District Munsif, Tindivanam, seeking for recovery of money based on a promissory note against the respondent. The respondent / defendant also filed a written statement in the suit denying the execution of any promissory note in favour of the petitioner and stating that the promissory note which the petitioner relies upon is a forged and fabricated promissory note. The Trial Court dismissed the suit O.S. No.985 of 1995. Aggrieved by the dismissal of the suit, the petitioner preferred an appeal in A.S. No.86 of 1996 before the learned Subordinate Judge, Tindivanam. During the pendency of the appeal, the petitioner filed two applications viz. IA. No.25 of 2014 in A.S.

No.86 of 1996 to send the Salary acquittance Register for the year 1990-1995 of Usman Beigh, who is the son of the respondent / defendant and also for comparison of the signatures of the defendant in the suit promissory note and another application viz., I.A. No.188 of 2013 in A.S. No.86 of 1996 to send the pronote, dated 09.05.1989 and the suit pronote to the handwriting expert to compare the signatures of the respondent/defendant Khadar beigh Saibhu and Gouse beig Saibu. A counter was also filed by the respondent / defendant to I.A. Nos. 25 of 2014 and 188 of 2013. By order dated 05.12.2013, I.A. No.188 of 2013 was dismissed and by order dated 26.02.2014, I.A. No.25 of 2014 was dismissed. Aggrieved by the dismissal of the aforesaid Interlocutory Applications, the instant Civil Revision Petitions have been filed.

3. Heard Mr.R. Sunil Kumar, learned counsel for the petitioner and Mr.S.Shaji Paul, learned counsel for the respondent.

4. It is submitted by the learned counsel for the petitioner that the petitioner did not seek the subject documents to be sent to an handwriting expert during the pendency of the suit, since the petitioner was under the impression that the documents produced in

the suit viz., the suit promissory note as well as another document, wherein the signatures of the respondent / defendant is undisputed, would suffice for the purpose of proving his claim. But unfortunately, the Trial Court did not accept the said document and dismissed the suit. Therefore, the petitioner was constrained to file I.A. Nos.25 of 2014 and 188 of 2013 only in the appeal A.S. No.86 of 1996.

5. The Learned counsel for the petitioner drew the attention of this Court to a single judge judgment of this Court reported in **2003 (3) LW 649 in the case of Palaniammal versus Palaniswami and others** wherein, this Court has held that even in an appeal, an handwriting expert can be appointed to compare the disputed signatures with the other admitted signatures of the respondent / defendant.

6. The Trial Court has rejected the applications, solely on the ground that the applications filed by the petitioner cannot be entertained in the appellate stage. This Court after having perused the judgment of the learned Single Judge of this Court in the reported decision referred to supra is in agreement with the view expressed

therein. However, considering the fact that the petitioner did not file the applications during the pendency of the suit, which he could have very well done, costs will have to be imposed on the petitioner for allowing the Civil Revision Petition. The learned counsel for the respondent also fairly concedes that his clients are willing to receive costs for allowing the Civil Revision Petitions filed by the petitioner.

7. In the result, both the Civil Revision Petitions are allowed and the impugned orders dated 26.02.2014 and 05.12.2013 passed in I.A. Nos.25 of 2014 and 188 of 2013 respectively in A.S. No.86 of 1996 are hereby set aside, on condition that the petitioner pays a sum of Rs.3,000/- (Rupees three thousand only) to the respondent within a period of four weeks from the date of receipt of a copy of this order, failing which the Civil Revision Petitions shall stand automatically dismissed. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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ABDUL QUDDHOSE, J.

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To
The learned Additional Subordinate Judge,
Tindivanam.



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