

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.15 of 2017

and

C.M.P.No.90 of 2017

Murugesh

... Petitioner

-VS-

Nagarathinam

... Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.04.2015, passed in I.A.No.250 of 2015, in O.S.No.675 of 2014 by the learned First Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.K.Vignesh Karthick

For Respondent : Mr.Saravana Sowmiyar

सत्यमेव जयते

ORDER

The above Civil Revision Petition is filed challenging the dismissal of the Application filed by the Revision Petitioner/Defendant for sending the Promissory Note/Exhibit A.1 for comparison and to seek the opinion of an expert to verify the colour of the ink and type of the pen used therein.

2.The Suit in O.S.No.675 of 2014 is filed for recovering a sum of Rs.6,16,000 together with interest on a Promissory Note, which has been marked as Exhibit A.1.

3.From the written statement filed by the Revision Petitioner/Defendant, it is seen that the execution, namely, signing of the document is denied and that the Defendant did not know the Plaintiff and the Promissory Note has been fabricated with the active collusion of the person who has signed as the witness. Apart from that, the Defendant has also stated that the Plaintiff did not have the capacity to extend such huge amount of loan to the defendant, which is a matter that has to be proved by the plaintiff.

4.Pending the Suit, the said Application has been filed by the Revision Petitioner/Defendant since in the cross-examination, P.W.1 has stated that the entire contents of the Promissory Note has been filled by another person in one ink whereas the Promissory Note which is marked as Exhibit A.1 depicts a different ink. Therefore, he has filed the Application in question. The same has been dismissed by the Court below stating that there was no necessity to compare the writings in the document since the document has been subjected to dust, due to which the nature and the colour of the

paper would also be changed. Therefore, there was no necessity to send the same for comparison. The Court below has also taken note of the fact that though the trial in the Suit has commenced on 02.11.2009, the defendant has come forward with the impugned Application only after the matter was posted for the defendant side evidence. The lower court would further observe that it is for the Revision Petitioner/defendant to prove that the Promissory Note has been forged and that though, he had filed his written statement on 29.01.2007, he has not taken any step to file a petition under Section 45 of the Evidence Act till date.

5. Heard, the learned counsel on either side.

6. Considering the fact that it is for the Revision Petitioner/Defendant to prove the execution of the Promissory Note, this Court is of the view that the Promissory Note should be sent for an expert opinion, only for the purpose of comparing the signature of the Defendant in the Promissory Note with any public document. The said exercise shall be completed within a period of one week from the date of receipt of a copy of this order.

7. Therefore, the fair and decretal order, dated 06.04.2015, passed in I.A.No.250 of 2015 in O.S.No.675 of 2014 is set aside.

8.In the result, the Civil Revision Petition is allowed in the above terms. No costs. Consequently, the connected Miscellaneous Petition is also closed.

20.03.2019

Index : Yes/No

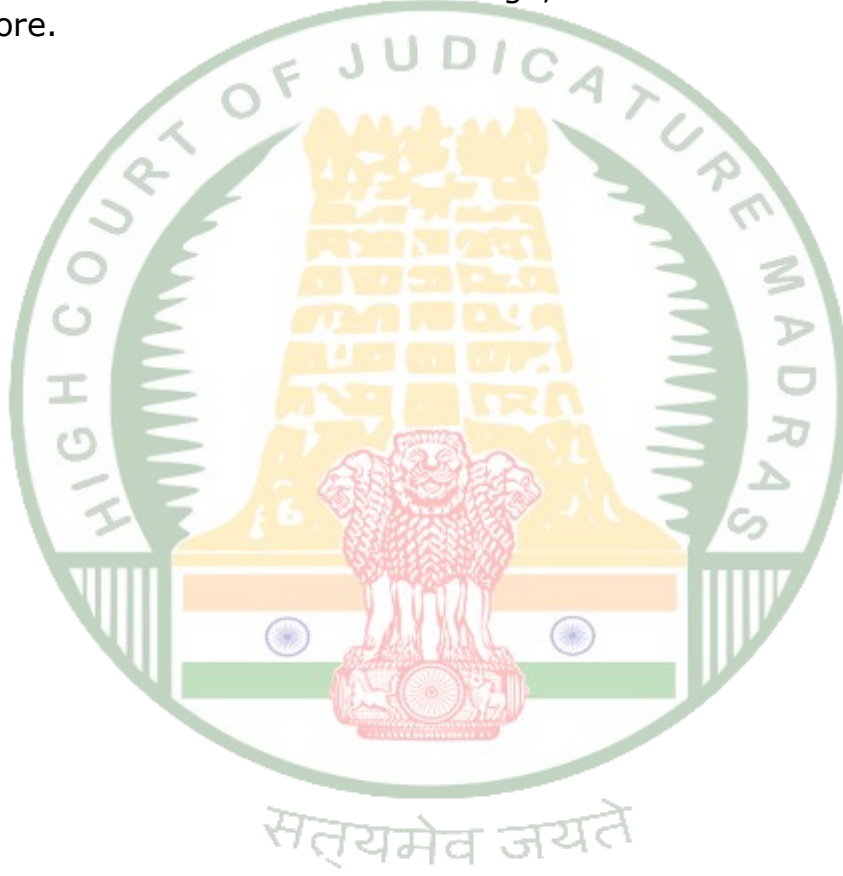
Internet : Yes / No

Speaking/non-speaking order
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To
learned First Additional Subordinate Judge,
Coimbatore.



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P.T.ASHA.J.,

tsg



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