



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.2251 of 2012(PD)

and

M.P. (MD) .No.1 of 2012

Raja ...Petitioner / Respondent No.1 / Plaintiff

Vs.

1.Azhagirisamy

2.Muthusamy

3.Nagarajan

4.A.Karthikeyan

...Respondents 1 to 4/ Petitioners 1 to 4/
Defendants 1, 3, 4 & 6

5.Siva

...Respondent-5 / Petitioner-5 / Defendant-7

6.Duraisamy @ Azhagarsamy

7.Kalimuthu

...Respondents 6 & 7/ Respondents 2 & 3 /
Defendants 2 & 5

PRAYER: This Petition filed under Article 227 of the Constitution of India to call for the records and set aside the fair and decretal order dated 15.07.2011 made in I.A.No.66 of 2011 in O.S.No.6 of 2009 on the file of the Sub court, Periyakulam and allow this Civil Revision Petition.

For Petitioner	:	Mr.K.Appadurai
For R-1 to R-5	:	Mr.V.Janakiramalu
For R-6 to R-7	:	No Appearance

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below allowing the application filed by the respondents 1 to 5 / defendants 1, 3, 4, 6 and 7 for sending the promissory notes, which have been marked as Ex.A.1, Ex.A.2 and Ex.A.5, for expert opinion. The petitioner is the plaintiff in the suit. The suit was filed for recovery of money based on the promissory notes executed by late Azhagarsamy and the fifth defendant in the suit. The defendants filed their written statements. It is seen from the written statements filed by the second defendant and the fifth defendant that they have admitted the execution of the promissory notes by late Azhagarsamy and the fifth defendant and they have contested the suit, on other grounds. The



respondents 1 to 5 have filed a separate written statement and have taken a stand that the promissory notes have been forged.

2. The respondents 1 to 5 filed an application before the Court below to send the promissory notices for expert opinion on the ground that the signature of their father late Azhagarsamy has been forged. This application has been allowed by the Court below on the ground that the respondents 1 to 5 have disputed the signature found in the promissory notes and therefore, it becomes necessary to get the opinion of an expert.

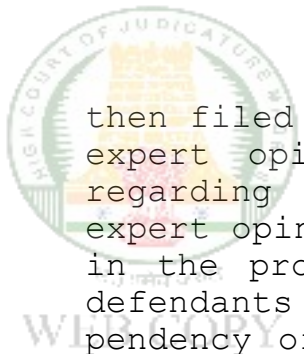
3. The learned counsel appearing for the petitioner submitted that the suit was filed in the year 2009 and this application came to be filed in the year 2011 and it was done only to drag on the proceedings. The learned counsel submitted that some of the defendants have admitted the execution of the promissory notes and some of them have questioned the signature found in the promissory notes. The learned counsel submitted that the defendants have colluded with each other and some of them have filed the application only with an intention to drag on the proceedings.

4. Per contra, the learned counsel appearing for the respondents 1 to 5 submitted that these respondents have specifically taken a stand in the written statement that the signature found in the promissory notes is forged and the signature of their father late Azhagarsamy has been forged with the connivance of the fifth defendant. The learned counsel submitted that having taken such a defence, it becomes important for the respondents 1 to 5 to establish the defence and therefore, the report of an expert opinion becomes necessary in this case. The learned counsel submitted that the Court below has given sufficient reasons for allowing the application and therefore, there are no grounds to interfere with the same.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The suit for recovery of money was filed in the year 2009 by the petitioner. Two of the defendants namely D.1 and D.5 have taken a stand to the effect that the promissory notes were executed by their father late Azhagarsamy and the fifth defendant. The other defendants have taken a stand that the promissory notes are forged documents and the signature of their father late Azhagarsamy has been forged.

7. The application for referring the disputed promissory notes came to be filed in the year 2011. It looks like there is an inter se dispute between the defendants. It is also possible that the defendants are taking different pleas in order to drag on the proceedings. The respondents 1 to 5 waited for nearly two years and



then filed the present application to refer the promissory notes for expert opinion. The Court below should have satisfied itself regarding the requirement for sending the promissory notes for expert opinion, since the fifth defendant has admitted the signature in the promissory notes. The stand that was taken by the other defendants namely, respondents 1 to 5 has now resulted in the pendency of the suit for the last ten years. The defendants have achieved what they wanted to achieve by filing an application and the suit has been successfully dragged on for the last ten years. Ultimately, the petitioner, who is the plaintiff has been left high and dry and is not able to prosecute the suit filed by him for recovery of money.

8. In the considered view of this Court, the application filed by the respondents 1 to 5 is a clear ruse to drag on the proceedings and the Court below ought not to have allowed the application. The fair and final order passed by the Court below in I.A.No.66 of 2011, dated 15.07.2011, requires interference and accordingly, the same is set aside.

9. In the result, the Civil Revision Petition stands allowed and the Court below is directed to complete the proceedings in O.S.No.6 of 2009, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To
The Subordinate Judge, Periyakulam.

Copy to:
The Record Keeper, VR Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V. JANAKIRAMULU, Advocate (SR-101474[F] dated 26/11/2019)

+1 CC to M/s.K. APPADURAI, Advocate (SR-101368[F] dated 26/11/2019)