



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:26.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.2407 of 2012 (PD)

and

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

S.Petchiraman ...Petitioner / Petitioner / Defendant

Vs.

A.Duraisingh ...Respondent / Respondent / Plaintiff

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the order dated 20.04.2012 passed in I.A.No.166 of 2012 in O.S.No.377 of 2010, on the file of the Principal District Munsif, Thoothukudi.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.S.C.Herold Singh

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below dismissing the application filed under Order 26 Rule 10 of the Code of Civil Procedure to send the disputed signatures found in the promissory note to be compared along with the contemporaneous documents through an Advocate Commissioner and to get an expert opinion.

2. The petitioner is the defendant in the suit. The respondent / plaintiff has filed a suit for recovery of money based on a promissory note. The petitioner has taken a specific stand that the signatures found in the promissory note is forged and it is not the signature of the petitioner / defendant.

3. In order to substantiate the defence that was taken by the petitioner, an application came to be filed to send the promissory note to get an expert opinion. The Court below has dismissed this application on the ground that the Court itself can compare the disputed signature with the admitted signature and there is no requirement for getting an expert opinion in this regard. The



Court below has also given a finding that the difference in the signature is clearly apparent to the naked eye.

4. The learned counsel appearing for the petitioner submitted that even though the Court has been given the power to compare the signature under Section 73 of the Indian Evidence Act, it is now a well settled principle of law that it is always safe for the Court to get an expert opinion in order to conclusively come to a conclusion regarding the disputed signature. Therefore, the learned counsel submitted that the promissory note must be sent for getting the expert opinion regarding the signature found therein and which could be compared with the signatures found in the contemporaneous documents that have been filed before the Court below.

5. Per contra, the learned counsel appearing for the respondent submitted that the Court below had seen the signatures found in the promissory note and the admitted signature found in the documents and has prima facie come to a conclusion that the signature varies. Under such circumstances, it is not necessary for the Court below to send the document for expert opinion and the Court itself can do the said exercise by virtue of the powers conferred under Section 73 of the Indian Evidence Act. The learned counsel submitted that there is no ground to interfere with the order passed by the Court below.

6. The petitioner has taken a very specific stand before the Court below to the effect that the promissory note is a forged document and the petitioner has not executed any such promissory note. Therefore, in order to substantiate this defence, the petitioner wanted the signature found in the promissory note to be compared with the signatures found in the admitted documents.

7. It is true that power has been conferred upon the Court under Section 73 of the Indian Evidence Act to compare the signatures by itself. However the difficulty is that it cannot give a finding based on any subjective satisfaction and the Court has to necessarily assign the reason as to why it finds the signature to be different. The safest way is to refer the disputed signature and the admitted signature *ante litem motam* to an expert and get his report. The law on this issue has been dealt with by the Hon'ble Supreme Court in the case of **Thiruvengadam Pillai Vs. Navaneethammal and another** reported in (2008) 4 SCC 530.

8. In the present case, the petitioner has already submitted the contemporaneous documents which contains the admitted signatures of the petitioner. This signature will have to be compared with the disputed signature as found in the promissory note. As held by the Hon'ble Supreme Court in the decision cited supra, it will be safe to refer the documents to the expert and get his report.



9. In view of the above, the fair and final order passed by the Court below in I.A.No.166 of 2012, dated 20.04.2012, is hereby set aside. The Court below is directed to send the promissory note along with the admitted documents dated 01.04.2010 and 03.10.2008, through an Advocate Commissioner and get an expert opinion with regard to the disputed signature found in the promissory note. The entire costs shall be borne by the petitioner. This process shall be completed within a period of two months from the date of receipt of a copy of this order. The suit shall be disposed of within a period of two months after the receipt of the expert opinion.

10. The Civil Revision Petition stands allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal District Munsif, Thoothukudi.

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

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-101696[F] 27/11/2019)

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