



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2579 of 2015

and

M.P. (MD) No. 1 of 2015

1. Dhanalakshmi

2. Sundaravadhanam

.. Petitioners/Petitioners/Defendants

Vs.

K.K. Velusamy

.. Respondent/Respondent/Plaintiff

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the Additional Sub ordinate Judge, Karur in I.A.No.559 of 2013 in O.S.No.216 of 2012 dated 06.10.2015.

For Petitioners

: Mr.K.Suresh

For Respondent

: Mr.K.Govindarajan

ORDER

Heard Mr.K.Suresh, learned counsel appearing for the petitioners and Mr.H.Lakshmi Shankar, learned counsel appearing for the respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.559 of 2013 in O.S.No.216 of 2012 dated 06.10.2015 on the file of the learned Additional Sub ordinate Judge, Karur.

3.The petitioners herein are the defendants 1 and 2 and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.216 of 2012 for recovery of money. In that suit, the petitioners filed a petition in I.A.No.559 of 2013 for sending the document for expert opinion. The petition was dismissed by the trial Court. Against the dismissal order, the petitioners have come forward with the revision petition.

4.On the side of the petitioners, it is stated that the petitioners are the legal heirs of one S.V.Subramania Pillai. The plaintiff filed a suit on the basis of promissory note which is said to have been executed by the said S.V.Subramania Pillai. The



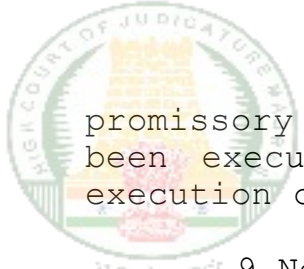
defendants denied the signature of S.V.Subramania Pillai in the promissory note and claimed the document as a forged one. It is stated that the document dated 07.02.2003, is a proof affidavit filed by the said S.V.Subramania Pillai. There is a document dated 11.02.2003, income tax certificate. Another document dated 07.01.2011 which is a general power of attorney executed by S.V.Subramania Pillai and prayed to sent the disputed document with the admitted document for expert opinion regarding the signature in the promissory note.

5.On the side of the respondent, it is stated that the written statement was filed in the year 2013 and after framing the issues on 06.06.2013, the petitioners have come forward with this petition just to drag on the case. The general power of attorney is not a genuine document and there is no necessity to take two years to file a petition.

6.On the side of the petitioners, it is stated that the trial Court dismissed the petition based on the citation. The citation mentioned in the order passed by the trial Court is the judgment passed by this Court in the case of **Marappa Gounder and others v. Kandasamy** reported in **(2002) 3 MLJ 617**, which is regarding the comparison of the disputed documents with the admitted documents, after the filing of the suit. Hence, this citation is not applicable to the present situation of the case.

7.The learned counsel appearing for the petitioners relied on the Judgment in the case of **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and others** reported in **2016-2-CTC-481 (FB)**, the Andhra Pradesh High Court has held that the contemporaneous document can be sent for comparison and it is stated that "Contemporaneous means occurrence at same period of time. No specific measure could be assigned to the element of contemporaneity. One of the famous authors in the field of examination of documents, Ordway Hilton, in his famous book *Scientific Examination of Questioned Documents*, states that material written two or three years before or after the disputed writing serve as satisfactory standards and the same is enunciated in page 11 of Annexure enclosed." Generally two documents after the execution of the disputed document can be taken as a contemplated signature and prayed the revision to be allowed.

8.It is seen that the promissory note is said to have been executed by S.V.Subramania Pillai under Negotiable Instrument Act. The defendants have to prove that no consideration is passed on the promissory note. Even in the written statemnet the defendants have made a specific line that the promissory note is forged and fabricated document. When the document is said to have been forged document, it is the duty of the defendants to prove the forgery. The document filed by the deceased before the Income Tax Department and proof affidavit dated 07.02.2003 are seven years old than the



promissory note and the general power of attorney is said to have been executed by the deceased S.V.Subramania Pillai is after the execution of the alleged promissory note.

9.No prejudice will be caused to the plaintiff in comparing these documents with that of the promissory note. An opportunity for the petitioners to put forth their case is to be given. Hence, the impugned order is liable to be allowed.

10.In the above circumstance, the Civil Revision Petition is **allowed** by setting aside the order passed in I.A.No.559 of 2013 in O.S.No.216 of 2012 dated 06.10.2015 on the file of the learned Additional Sub ordinate Judge, Karur. No Costs. Consequently, M.P. (MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Additional Subordinate Judge, Karur.

+1 CC to M/s.K.GOVINDARAJAN, Advocate SR-65055.

C.R.P. (PD) (MD)No.2579 of 2015
30.04.2019

CS: (07/06/2019) 3P 3C