



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2019

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.R.P(MD) (PD)Nos.1847 to 1849 of 2019
and
C.M.P. (MD)No.9493 of 2019

Rajayan

... Petitioner in all C.R.Ps.

Vs.

Gideon Raj

... Respondent in all C.R.Ps

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, against the common order dated 07.09.2019 made in I.A.Nos.1 of 2019, 2 of 2019 and 3 of 2019 in O.S.No.90 of 2015 on the file of the Subordinate Judge, Padmanabhapuram, Kanyakumari District.

(In all C.R.Ps)

For Petitioner

: Mr.G.Aravinthan

For Respondent

: Mr.V.Meenakshi Sundaram
for Mr.R.Murugan

COMMON ORDER

These Civil Revision Petitions are filed to set aside the order dated 07.09.2019 in I.A.Nos.1 to 3 of 2019 in O.S.No.90 of 2015 on the file of the Subordinate Judge, Padmanathapuram, Kanyakumari District.

2. The petitioner herein is the plaintiff and the respondent is the defendant in the suit. The petitioner filed a suit in O.S.No.90 of 2015 for a prayer of recovery of money. In that suit, the plaintiff filed a petitions in I.A.No.1 of 2019, to reopen the case; and I.A.No.2 of 2019 to send for the minute book of Kothanallur Panchayat for the period 2000-2005 and for a settlement deed, dated 26.11.2012, registered in Thuckalay Subregistrar Office as document No.3224 of 2012; and I.A.No.3 of 2019, to appoint an Advocate Commissioner for taking the documents for comparison. All these petitions were dismissed by the trial Court. Against which the petitioner preferred these Civil Revision Petitions.



3. Brief substance of the petitions in I.A.Nos.1 to 3 of 2019 is as follows:

The petitioner filed a suit for recovery of money against the respondent on the basis of a promissory note. The respondent denied his signature in the promissory note in his written statement as well as in his evidence and comparing the signature with the signature in the admitted document is necessary and for such comparison the petitioner filed a petition in I.A.No.2 of 2019, to call for the records and filed I.A.No.1 of 2019, to reopen the suit for enabling the petitioner to mark the document and I.A.No.3 of 2019 for appointment of an Advocate Commissioner, to take the documents for comparison.

4. Brief substance of the counter is as follows:

The defendant denied the signature as early as on 23.03.2017 in the written statement itself. The plaintiff failed to take steps all these days and come forward with these petitions, after the trial was over, at the stage of arguments, only to prolong the case. These petitions are not necessary and the petitions are to be dismissed.

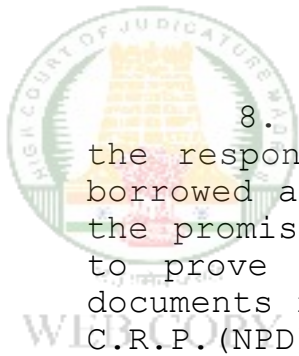
5. The trial Court after considering both sides, dismissed the petitions. Against which, the revision petitioner preferred these Civil Revision Petitions, on the following grounds:

(i) the trial Court failed to consider that the petition to reopen the case has been filed only to mark the documents

(ii) except the delay, no other reason is stated by the trial Court for dismissing the petitions.

6. On the side of the revision petitioner, it is stated that to substantiate the claim of the petition, expert opinion is necessary. The defendant was the Panchayat President and he has signed the minutes book and hence, the minute book for the year 2000-2005 is necessary and another document dated 26.11.2012, a settlement deed executed by the defendant in favour of his son is also to be sent for and both the documents are to be compared with the disputed promissory note. It is stated that the suit promissory note is dated 28.12.2012 and the settlement is dated 26.11.2012 and both are contemporary documents and the trial Court failed to give any findings in I.A.Nos.1 and 2 of 2019.

7. On the side of the revision petitioner, it is stated that in a Civil Revision Petition in C.R.P(MD)No. 580 of 2011, this Court has passed an order, dated 26.10.2018, wherein it is held that a signature in the pleadings cannot be a yardstick for comparing the signature in a disputed document, since there is a possibility of the signatures being deliberately modified.



8. On the side of the revision petitioner, it is stated that the respondent, who had come forward with a case that he had not borrowed any money from the appellant and that he had not executed the promissory note has failed to discharge the onus cast upon him to prove the same and he has also kept away the contemporary documents for comparison by the expert. A judgment of this Court in C.R.P.(NPD)No.2274 of 2005, dated 06.06.2018 is cited.

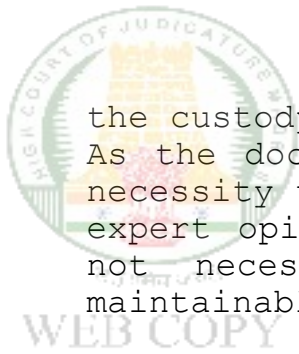
9. On the side of the respondent, it is stated that the petitioner called for document for the period between the year 2000-2005. Those documents were more than 5 years old documents and those documents cannot be compared with the suit promissory note. It is further stated that those documents are in the custody of the Panchayat Union and the documents are not available with the defendant and that the documents are minute books of the Panchayat Union and there is no possibility for calling the records from the defendant.

10. It is further stated that the second document called for by the defendant is a settlement deed, which is subsequent to the suit promissory note. The suit was filed in the year 2015 and the written statement was filed on 23.03.2017, denying the signature and the trial commenced on 09.01.2018 and the plaintiff examined himself as P.W.1 and also two attestors as P.W.2 and P.W.3. The plaintiff side evidence was over on 12.11.2018 and only on 11.04.2019, the petitioner has filed this three I.A. petitions. The reason for filing these petitions is that the attesting witnesses did not support the case of the plaintiff. P.W.2 has deposed that he has not seen the plaintiff handing over the loan amount to the defendant. P.W.3 has deposed that he was talking in the cellphone, while the defendant signed the document. There is contraction in the evidence of P.W.1 and P.W.2 regarding the place of execution of the document and to fill up all these lacuna, the plaintiff has come forward with these petitions and the opinion of the expert will be only a corroborating evidence and cannot be a conclusive proof.

11. On the side of the petitioner, it is stated that P.W.2 has turned hostile and that necessitated the plaintiff to file these petitions.

12. It is seen that the suit was filed in the year 2015 and even in the written statement the signature of the defendant in the promissory note was denied, the petitioner has come forward with these petitions at a belated stage. The first document called for by the plaintiff is not in the custody of the defendant and that the documents are old documents, which are not necessary to be called for. The second document is a contemporary document, but the document should be in the hands of the son of the defendant, who is the beneficiary of the settlement deed.

<https://hcservices.ecourts.gov.in/Services> In the above circumstances, since documents are not in



the custody of the defendant, there is no merit in I.A.No.1 of 2019. As the documents are not available with the defendant there is no necessity to send for the document from the defendant for getting an expert opinion, hence, the appointment of Advocate Commissioner is not necessary and hence, I.A.Nos.2 and 3 of 2019 are not maintainable.

14. For the above reasons, there is no reason sufficient enough to interfere in the orders of the trial Court. However, the signature in the vakalat and written statement were not denied by the plaintiff, if needed the Court can verify the signatures in the vakalat, written statement and other documents with the disputed documents. If needed liberty is given to the petitioner herein to take steps for production of the original settlement deed from the concerned third person.

15. With the above observation, these Civil Revision Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To

The Subordinate Judge,
Padmanabhapuram,
Kanyakumari District.

C.R.P(MD) (PD)Nos.1847 to 1849 of 2019

and

C.M.P. (MD)No.9493 of 2019

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