

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).2733 of 2015

and

MP.No. 1 of 2015

1. Kasthuri

2. Muralidharan

... Petitioner

Vs.

Indira Ramaraju

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of CPC to set aside the fair and decreetal order dated 10.03.2015 in IA.No.77 of 2014 in AS.No.23 of 2013 passed by the learned District Judge, Nagapattinam and allow the present revision.

For Petitioners : Mr.C.UmaShankar

For Respondent : Mr.A.Muthu Kumar

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants against the dismissal of their application in IA.No.77 of 2014 in AS.No.23 of 2013 on the file of the District Judge, Nagapattinam dated 10.03.2015.

2. The petitioners herein had filed an application in IA.No.77 of 2014 in AS.No.23 of 2013 on the file of the District Judge, Nagapattinam under Order 26 Rule 10-A and Section 151 of CPC and Section 45 of the Evidence Act to send Ex.A1 Promissory Note to the Forensic Expert for getting hand writing expert's opinion with regard to the signature of the deceased Arumugam found in the said promissory note. The learned District Judge, Nagapattinam by the order dated 10.03.2015 had dismissed the said application. Feeling aggrieved, the petitioners/defendants/appellants have filed the present Civil Revision Petition.

3. When this matter came up for hearing before this Court on 20.11.2020, the learned counsel for the petitioners has submitted that the respondent herein had filed a suit in OS.No.08 of 2005 on the file of the Sub Judge, Mayiladuthurai against one Arumugam for recovery of sum of Rs.2,83,000/- with subsequent interest. During pendency of the said suit, the said Arumugam died and hence, his legal representatives have been impleaded as defendants 2 to 5. He further submitted that the defendants 2 to 5 after entering appearance, filed written statement denying the signature of the deceased Arumugam in the suit promissory note and had specifically pleaded that the suit promissory note is a fabricated one and inspite of such a specific defence, the respondent herein had not taken any steps to send the said promissory note to the hand writing expert for getting opinion and the learned trial court had also without considering the said fact had mechanically decreed the suit and hence, the petitioners herein who are being the defendants 2 and 4 had filed an appeal in AS.No.23 of 2013 on the file of the District Judge, Nagapattinam and also filed an application in IA.No.77 of 2014 seeking the Appellate court to send the Ex.A1 Promissory Note to the hand writing expert for getting opinion with regard to the signature of the

deceased Arumugam found in the said promissory note. He further submitted that the Appellate Court without considering the facts that the petitioners are only legal heirs of the original defendant and also the defence taken up by them before the trial court and also the fact that the respondent had not taken any steps for getting experts opinion, had erroneously dismissed the said application. He further submitted that the Appellate Court had dismissed the said application on the ground that the petitioners have not produced any document containing the admitted signatures of the deceased Arumugam. If the Appellate Court felt that the petitioners have not produced any document containing the admitted signature of the deceased Arumugam along with the petition, it should have directed the petitioners to produce the said document, but, without giving an opportunity to the petitioners to produce the said document, it had dismissed the said application in a disposal mood and hence, he requested the court to grant time for producing documents containing signature of the deceased Arumugam.

4. Considering the said submissions, this matter has been adjourned and posted today (10.12.2020). In the meanwhile, the

petitioners' counsel has filed a memo along with six documents. The learned counsel for the petitioners has submitted that this Court may direct the Appellate Court to send the aforesaid documents to the hand writing expert and after receiving expert's opinion with regard to the signature of the deceased Arumugam, to dispose of the appeal in accordance with law.

5. The learned counsel for the petitioners had filed a memo along with certain documents stating that in the said documents, admitted signatures of deceased Arumugam are found and the said documents may be sent to the hand writing experts along with suit promissory note for comparison and report.

6. The learned counsel for the respondent has submitted that along with the aforesaid memo, the learned counsel for the petitioners have filed six documents and out of the said documents, the document (c) is the certified xerox copy of the the suit promissory note, the documents (a), (b), (d) and (f) are un-registered documents and it would not be safe to rely on the said documents. He further submitted that the document (e)

is the sale deed dated 28.03.2002 and the same is a registered document and if the court is inclined to direct the Appellate Court to get an hand writing expert's opinion, the said document alone may be sent to the hand writing expert along with the suit promissory note and after receipt of the report, the Appellate Court has to dispose of the appeal at early.

7. A perusal of the typed set of papers filed by the petitioners shows that the respondent herein had filed a suit in OS.No.08 of 2005 on the file of the Sub Judge, Mayiladuthurai on a promissory note for recovery of sum of Rs.2,38,000/- with subsequent interest, based on a promissory note said to have been executed by one Arumugam. During pendency of the said suit, the said Arumugam died and hence, his legal representatives have been impleaded as the defendants 2 to 5. The defendants 2 to 5 after receipt of summons entered appearance and filed written statement denying the execution of the suit promissory note by the deceased Arumugam and also took a plea that the signature found in the said promissory note does not belong to the deceased Arumugam.

8. The grievance of the petitioners is that the trial court without considering the said defence had decreed the suit and hence, they filed an appeal and in the said appeal, they filed an application to send the disputed document to the hand writing expert. The Appellate Court had dismissed the said application on the ground that the petitioners have not produced the documents containing admitted signature of the deceased Arumugam. The approach of the first Appellate Court is not proper. If the petitioners have not produced the documents containing admitted signature of the deceased Arumugam, an opportunity should have been given to the petitioners to produce the documents containing admitted signatures and even thereafter, if they have not produced the documents containing admitted signatures of the deceased Argumugam, then it can dispose of the petition, but, in this case, the Appellate Court without calling for the petitioners to produce the documents containing admitted signatures of the deceased Arumugam, it had dismissed the said application. Hence, this Court is of the view, the said order is liable to be set aside.

9. Considering the fact that the petitioners are legal heirs of the original defendant Arumugam, this Court is of the view that an opportunity should be given to the petitioners to get hand writing expert's opinion with regard to the signature of the deceased Arumugam.

10. In the result, this Civil Revision Petition is allowed. The order passed by the District Judge, Nagapattinam in IA.No.77 of 2014 dated 10.03.2015 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

11. It is represented that now the Additional District Court has been constituted at Mayiladuthurai and the aforesaid appeal also has been transferred to the said court. Hence, the Registry is directed to send the documents which were filed along with the memo by the learned counsel for the petitioners dated 08.12.2020 to the Additional District Court, Mayiladuthurai. The learned Additional District Judge, Mayilduthurai is directed to send the Ex.A1 Promissory Note along with the original sale deed dated 28.03.2002 (document No.192 of 2002 on the file of the Sub Registrar, Sembanar Koil), said to have been executed

by one Sri Padmavathi and Praveen in favour of the deceased Arumugam and his wife Kasthuri to the Tamil Nadu Forensic Science Lab through an Advocate Commissioner to compare the disputed signature of deceased Arumugam which is found in Ex.A1 Promissory Note with the admitted signatures of the deceased Arumugam which are found in the aforesaid sale deed and sent a report and after receipt of the said report, the Appellate court has to dispose of the said appeal as early as possible without unnecessary delay.

10.12.2020

Vv

Index : Yes/No
Internet : Yes/No

To
The District Judge,
Nagapattinam.

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P.RAJAMANICKAM.J.,

Vv



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