

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (PD) No.968 of 2020 and

CMP No.5269 of 2020

Subramani

... Petitioner

Vs.

Shanthi

... Respondent

Prayer: This Civil Revision Petition has been filed under Section 227 of the Constitution of India against the fair and decreetal order dated 22.10.2019 passed in I.A.No.741 of 2019 in O.S.No.162 of 2017 by the Subordinate Judge, Kangayam.

For Petitioners : Mr.M.Guruprasad

सत्यमेव जयते

ORDER

WEB COPY

This petition has been filed against the fair and decreetal order dated 22.10.2019 passed in I.A.No.741 of 2019 in O.S.No.162 of 2017 by the Subordinate Judge, Kangayam.

2. The petitioner is the defendant in the original suit in O.S.No.162 of 2017. The above said suit was filed by the respondent/plaintiff against the petitioner for recovery of money based on the promissory note. Pending suit, the petitioner filed a petition in I.A.No.741 of 2019 to send the disputed promissory note to the signature expert for comparison of the signature found therein. According to the petitioner the suit promissory note was never executed by him and it is a forged one and hence, the promissory note should be sent to the Forensic Department along with the vakalath, written statement and sale deed dated 27.08.2015. The contention of the petitioner is that the disputed signature found in the promissory note should be compared with the admitted signatures found in the vakalah, written statement and original sale deed dated 27.08.2015 by the signature expert. The said application was dismissed by the Trial Court. Challenging the said order, the present civil revision petition has been filed.

3. I have perused the materials on record and the orders passed by the Trial court. The petitioner in his written statement, denied his signature in the promissory note. Therefore, the burden of proof is on the respondent/ plaintiff and not on the petitioner/defendant.

4. At this juncture, it is relevant to rely upon the decision of this court in ***P.Stanley Buck Vs. d.Govindraj reported in 2009(7) MLJ 908***, wherein, at paragraph No.26, and 27, it has been held thus.

26. In *Thiruvengadam Pillai V. Navaneethammal and Another*, (2008) 4 SCC 530: (2008) 2 MLJ 1115, the issue before the Supreme Court was regarding the observation made by the First Appellate Court about the failure on the part of the defendants to prove that the signature was forged. By concurring with the views of the High Court in setting aside the findings of the trial court, by observing that it was for the plaintiff to prove the execution of document, the Supreme Court held thus at P.1124 of MLJ: " 17. The trial Court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts somethings to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case, the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove the negative. the issues also placed the burden on the

plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses ... "

27. In P.Sood & co. (Manufacturing) represented by its Partner, Krishna Kumar Sood V. Peerchand Misrimalji Bhansali, Prop. Meena Metals (2005) 2 MLJ 603: (2005) 3 CTC 12, Division Bench of this court opined that when the defendant denied the signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps to ascertain the genuineness of the disputed signature by sending the document to the hand writing expert."

Therefore, this court is of the view that once the defendant denied his signature found in the promissory, it is for the plaintiff to prove the genuineness of the said document before the trial court. Hence, I do not find any error in the orders passed by the trial court and the same does not warrant any interference by this court.

5. Accordingly, this civil revision petition is dismissed and the orders passed by the trial court is upheld. No costs. Consequently connected miscellaneous petition is closed.

05.03.2020

Index : Yes/No
Internet: Yes/No
Speaking order/Non Speaking order

mst

To

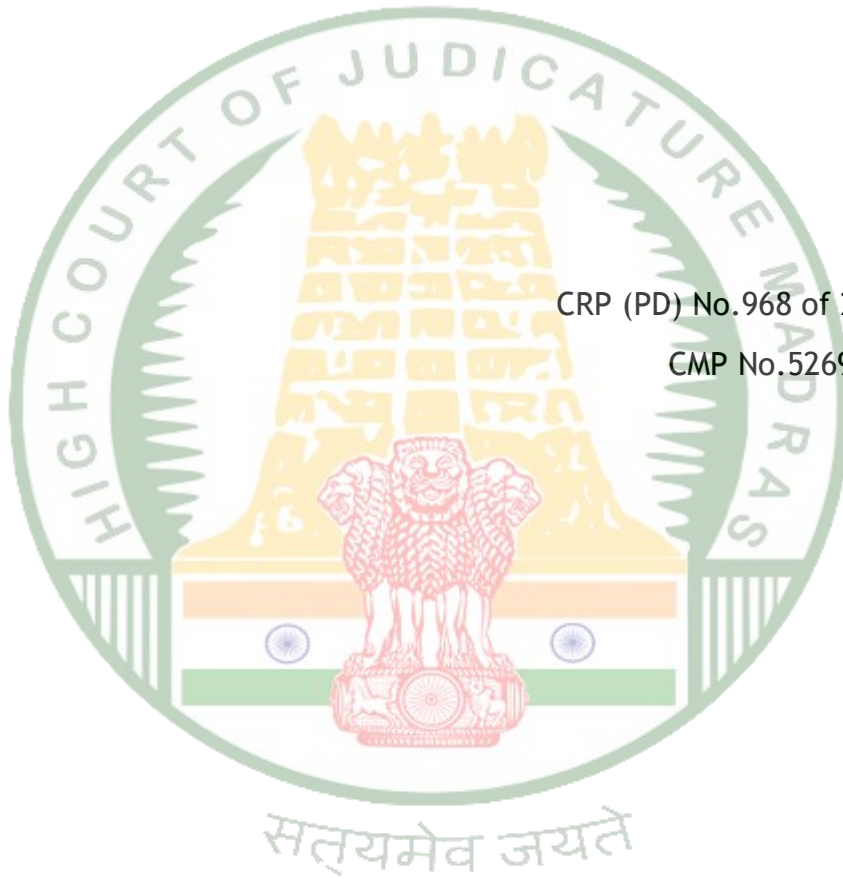
The Subordinate Judge,
Kangeyam.



WEB COPY

CRP (PD) 968 of 2020

D.KRISHNAKUMAR, J.,
mst



CRP (PD) No.968 of 2020 and
CMP No.5269 of 2020

WEB COPY 05.03.2020