

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD).No.3014 of 2013 and M.P.No.1 of 2013

and

C.R.P.(NPD)No.3015 of 2013

T.S.Babu

... Petitioners in both C.R.Ps

...Versus..

M.Saraswathi

... Respondents in both C.R.Ps

PRAYER in C.R.P.No.3014 of 2013:This Civil Revision Petition has been filed under Section 227 of Constitution of India, to set aside the fair and decretal order dated 29.04.2013 made in I.A.No.339 of 2013 in O.S.No.205 of 2008 on the file of the Subordinate Judge's Court, Tiruchengode.

PRAYER in C.R.P.No.3015 of 2013:This Civil Revision Petition has been filed under Section 227 of Constitution of India, to set aside the fair and decretal order dated 29.04.2013 made in I.A.No.340 of 2013 in O.S.No.205 of 2008 on the file of the Subordinate Judge's Court, Tiruchengode.

For Petitioner

::Ms.M.Poornima,

For M/s.Sarvabhauman Associates

ORDER

Though the respondent was served, none appeared.

2. This Civil Revision Petition has been filed against the common order passed in I.A.Nos.339 and 340 of 2013. The respondent filed a suit for recovery of money due on pro-note wherein evidence has been let in by both the parties and the said suit was posted 'for arguments'. The present application in I.A.No.339 of 2003 has been filed under Order 26 Rule 10 (A) of C.P.C for appointment of Advocate Commissioner and I.A.No.340 of 2013 is filed under Section 45 of Indian Evidence Act, to send for the disputed and admitted L.T.I of the defendant for comparison by an expert and to get an opinion.

3. It appears that before the trial Court during the course of evidence, the defendant has answered certain questions in the cross examination regarding the signature and thumb impression found in the suit pro-note and Ex.A3 Acknowledgement card.

4. In a suit on pro-note, the prima facie burden of proof lies upon the plaintiff to prove the execution of suit pro-note and passing off consideration for the same and if the initial burden of proof is proved by the plaintiff, then immediately the onus of proof shifts upon the defendant to rebut and disprove the case of the plaintiff. Under such circumstances, it is the duty of the petitioner to prove his prima facie case and it is for the defendant to disprove the same.

5. In view of the above position, I am of the considered view that the expert opinion as to the genuineness of the signature and the thumb impression in the pro-note has to be compared with the acknowledgement and the written statement and accordingly, the said I.As are ordered and the order passed in I.A.Nos are set aside and in addition to the prayer sought for in the petition, the Trial Court is hereby required to send requisition for comparison of both L.T.I found in the suit pro-note and on the acknowledgement card as well as the signature thereof and written statement and any other sample signature as sought for by the petitioner. Since the I.As have been filed belatedly, the same is allowed with costs of Rs.500/- to be handed over to the learned counsel for the respondent before the trial Court .

6. In the result, these Civil Revision Petitions are allowed and the trial Court is required to send the signature for comparison within a period of 12 weeks from the date of receipt of a copy of this order and with requisition to the Forensic Department to send this opinion within a period of 4 weeks thereafter and the trial Court shall dispose of the suit itself within 8 weeks thereafter, after getting report from the Forensic Department. No costs. Consequently, connected M.P is closed.

23.01.2020

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

To

The Subordinate Judge's Court, Tiruchengode.

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C.R.P.(NPD)Nos.3014 and 3015 of 2013

RMT.TEEKAA RAMAN,J.,

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C.R.P.(NPD).No.3014 of 2013 and M.P.No.1 of 2013
and
C.R.P.(NPD)No.3015 of 2013

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