

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (PD) No.941 of 2020 and

CMP No.5052 of 2020

T.Safarnaz

... Petitioner

V.

S.Vedagiri

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26.09.2019 passed in I.A.No.84 of 2019 in O.S.No.26 of 2017 by the Additional Subordinate Judge, Chengalpattu.

For Petitioner : Mr.S.Anburaja

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 26.09.2019 passed in I.A.No.84 of 2019 in O.S.No.26 of 2017 by the Additional Subordinate Judge, Chengalpattu.

2. The petitioner herein is the defendant and the respondent herein is the plaintiff in the original suit in O.S.No.84 of 2019, which was filed for recovery of a sum of Rs.1,43,000/-, based on the promissory note. The said suit was posted for trial. At this stage, the petitioner has filed an application in I.A.84/2019 to appoint an Advocate Commissioner to take the suit promissory note Ex.A1 along with the postal acknowledgment Ex.A3, which contains admitted signature of the defendant and also specimen signatures to the Forensic Laboratory and obtain opinion of the finger print expert. In the said application, the petitioner stated that the promissory note is not a genuine one and the signature found thereon is disputed and to prove the same, the said document has to be sent to the forensic department to get expert opinion by comparing the signature with the admitted signatures found in the acknowledgment and specimen signatures. The said application was dismissed by the trial court holding that the petitioner has taken inconsistency statement in the written statement and the affidavit. Against the order passed by the trial court, this revision petition has been filed.

3. On perusal of the affidavit shows that the petitioner has specifically raised a plea that the promissory note is a forged one and signature found in the promissory note is not belongs to her and no prejudice would be caused to the respondent/ plaintiff, if the said petition is allowed. But, once the signature found in the promissory note is denied by the defendant, it is for the plaintiff to take steps to prove the genuineness of the disputed signature by obtaining opinion from the signature expert or by filing available materials and examining witnesses before the court below. Further, the trial court has dismissed the above said application with the observation that the petitioner has admitted her liability of payment of Rs.1,00,000/- to the plaintiff.

4. At this stage, 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 her 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. The Trial court is directed to proceed with the suit and dispose the same, without influenced by any of the observations made by this court in the civil revision petition.

mst

Sd/-
Assistant Registrar (CS-III)

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

To

The Additional Subordinate Judge,
Chengalpattu.

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(CO)
mst (28/05/2020)

03.03.2020



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