

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(NPD).No.1732 of 2016
and
C.M.P.No.9204 of 2016

Krishnamurthy ... Petitioner

Vs.

Chinnasamy ... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of CPC against the fair and decreetal order dated 20.11.2015 passed in I.A.No.10 of 2014 in A.S.No.5 of 2013 on the file of the III Additional District Judge, Villupuram @ Kallakurichi.

For Petitioner : Mr. A.R.Nixon

ORDER

This Civil Revision Petition has been filed against the order of dismissing the petitioner's application to mark the Expert

Opinion and also to examine the handwriting expert.

2. The respondent herein filed a suit in O.S.No.95 of 2008 on the file of the Subordinate Court, Kallakurichi for recovery of money based on a pronote. The plaintiff's case was that the petitioner herein had borrowed a sum of Rs.1,00,000/- from one Gopal Udaiyar by executing a pronote. Subsequently, the said Gopal Udaiyar made over the pronote in favour of the plaintiff. The plaintiff, being the assignee of the pronote, has made a demand. Thereafter, filed a suit for recovery of money based on the said pronote. The suit has been contested by the petitioner, thereby denying the execution of the pronote as well as the alleged endorsement of made over by the Gopal Udaiyar, in favour of the respondent/plaintiff. In order to prove his defence, the petitioner had filed an application before the Trial Court to send the disputed thumb impression alleged to have made by the Gopal Udaiyar, which is marked as Ex.A2, with that of the admitted thumb impression of Gopal Udaiyar to the Handwriting Expert.

3. The Handwriting Expert has given an opinion that the thumb impression found in the reverse side of the promissory note is unfit for comparison as it is highly smudged, indistinct and does not reveal sufficient number of clear ridge details for comparison and opinion. Thereafter, the trial Court decreed the suit by a judgment and decree dated 06.08.2012. Challenging the said judgment and decree, the petitioner herein filed an appeal in A.S.NO.4 of 2013 on the file of the III Additional District Court, Villupuram at Kallakurichi. Pending appeal, the petitioner herein had filed an application under Section 151 of Civil Procedure Code to examine the Handwriting Expert as a witness and the said application has been dismissed by the lower appellate Court by an order dated 20.11.2015. Challenging the same, the present Revision has been filed.

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4. The earlier notice ordered to the respondent was returned as "Refused to receive" and it could be treated as a

sufficient service.

5. The learned counsel for the petitioner would vehemently contend that the trial Court without even marking the opinion of the Expert, decreed the suit, which is not permissible in law. Unless the Expert Opinion is marked and the Expert is examined, the petitioner cannot prove his defence. Now, the trial Court, without marking the document and without giving opportunity to examine the Expert, decreed the suit. In the above circumstances, the application filed by the petitioner before the Lower Appellate Court to examine the Expert has been dismissed by the lower appellate Court.

6. I have considered the submission made by the learned counsel for the petitioner and perused the materials available on records carefully.

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7. Pending suit, On an application filed by the petitioner, the disputed thumb impression has been sent to the Expert for

comparison, the Expert had given an opinion that the disputed thumb impression could not be compared as it is unfit for comparison. However, pending suit, the petitioner has not taken any steps to mark the document and also examine the Expert. Further, the trial Court relying upon the evidence of P.W.4, decreed the suit. Now, pending appeal, the present application has been filed to examine the expert. The lower appellate Court dismissed the application holding that since the Expert has not given any clear opinion in the disputed thumb impression, no purpose will be served in marking the same and examining the expert. When, the expert has given an opinion that the disputed Thumb impression is unfit for comparison, there is no purpose in marking the opinion before the lower appellate Court and by examining the Expert, no purpose will be served. Considering the same, the lower appellate court rightly dismissed the application. Hence, I find no irregularity or illegality in it. However, if at all the petitioner is not satisfied with the expert opinion, it is always open to him to take necessary steps to seek for another opinion

with another expert. Without doing so, the petitioner cannot maintain this petition. I find no merit in the revision and it is only liable to be dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. No costs.

02.01.2020

Index:Yes/No
Internet:Yes
Speaking/Non-speaking order
mrp

Note : Issue order copy on 06.01.2020
To

1. Subordinate Court, Kallakurichi
1. III Additional District Judge,
Villupuram @ Kallakurichi.

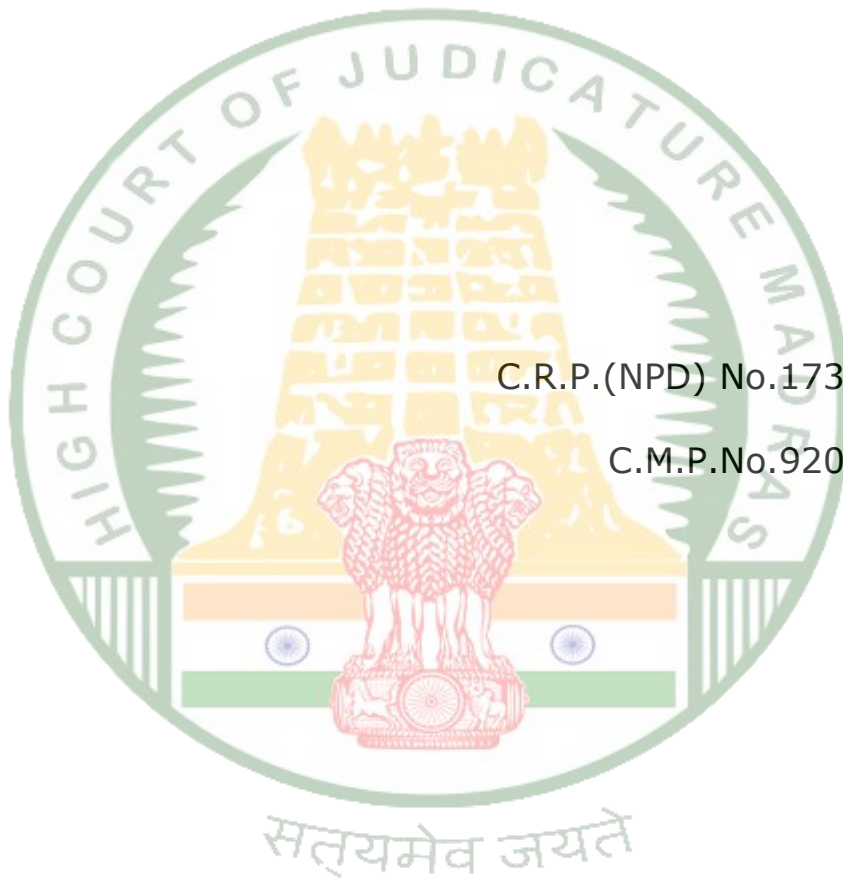
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V.BHARATHIDASAN, J

mrp



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