

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.R.P.No.2210 of 2018

and

C.M.P.No.13942 of 2018

Periammal

..Petitioner

Vs.

Sivan

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order of the Court of the Subordinate Judge, Kallakurichi in I.A.22/2017 in A.S.4/2016 dated 14th of February, 2018 in dismissing the petition filed under Order 26 Rule 10A for sending the petitioner's admitted thumb impression and disputed thumb impression to Bangalore finger print expert by adopting laser print finder along with still photograph.

For Petitioner : Mr.V. Ragavachari

For Respondent : Mr. K. Ramakrishnan

O R D E R

The defendant in O.S.No.63 of 2008, who suffered a decree for payment of money filed an appeal in A.S.No.4 of 2016. Pending the said appeal, she took out an application in I.A.No.22 of 2017 seeking to refer the suit promissory note to a finger print expert at Bangalore and have a laser evaluation of the thumb impression done. The said application was dismissed by the appellate Court which has led to the appellant approaching this Court with the civil revision petition.

2. The suit in O.S.No.63 of 2008 was laid by the plaintiff for recovery of money due on a promissory note. The petitioner herein / defendant denied execution of the promissory note. Hence an application was taken out by the plaintiff to refer the document to the Government finger print expert at Chennai. The expert submitted a report in Ex.C1 and she was also examined as D.W.2. The trial Court accepted the said report which found

that one of the thumb impressions found in the suit promissory note tallied with thumb impression of the defendants taken in the Court and decreed the suit. An attempt made by the defendant to have a second opinion even before the trial Court by filing an application in I.A.No.709/2012 was rejected by the trial Court.

3. Challenging the said decree, the defendant filed an appeal in A.S.No.4/2016. Pending the said appeal, an application is taken out as I.A.No.22/2017 seeking reference to an expert in Bangalore to have the finger print examined through laser. The appellate Court dismissed the application stating that the defendant not having challenged the order in I.A.No.709/2012 is not entitled to seek another reference of thumb impression to yet another expert.

4. I have heard, Mr. Ragavachari, in support of the revision petition and Mr. K. Ramakrishnan, appearing for the respondent.

5. Mr. Ragavachari would vehemently contend that as a defendant, the petitioner has got a right to have the document examined by an expert. More so, when the expert opinion that was marked as Ex.C1 before the trial Court shows that only one of the three thumb impression tallied with the admitted thumb impression of the defendant. He would also submit that the dismissal of I.A.No.709/2012 ought not to have been put against the petitioner since she has a right to challenge the dismissal of I.A.No.709/2012 in the appeal filed against the decree.

6. I have considered the submission of the learned counsel for the petitioner. I am unable to accept the submission of the learned counsel for the petitioner for the following reasons.

7. Originally, the promissory note was referred to an expert. It contains thumb impression. The admitted thumb impression of the defendant was taken in the open Court and the same was sent for comparison. The expert found that one of the thumb impression found in the promissory note tallies with the admitted thumb impression. As regards the other two thumb impression, the expert said they are smudged and therefore, they could not be compared. The defendant filed another application in I.A.No.709/2012 seeking a reference of the document to another expert, the same was dismissed by the trial Court on 03.10.2015. Admittedly, no revision has been filed against the said order.

8. Of course, as rightly contended by Mr. Ragavachari, it is open to him to challenge the order in I.A.No.709/2012 in the appeal filed by him against the original decree namely

A.S.No.4/2016. If he is able to convince the appellate Court that the trial Court was not right in dismissing the I.A.No.709/2012 it is well open to have the thumb impression in the promissory note referred to an expert again. We are not reached that stage yet. The appeal is still pending. Pending the appeal without having the order in I.A.No.709/2012 set aside, the petitioner cannot seek another reference of the same document to another expert.

9. In view of the same, I do not find any material irregularity in the order of the appellate Court in order to enable me to interfere with the same. Hence, the civil revision petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is however, made clear that it is open to the petitioner to raise all grounds available to him against the order in I.A.No.709/2012 in the main appeal and convince the Court that the order in I.A.No.709/2012 is incorrect and needs to be interfered with.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

1.The Subordinate Judge, Kallakurichi.

+1cc to M/s.V.Raghavachari, Advocate, S.R.No.25325

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and

सत्यमेव जयते C.M.P.No.13942 of 2018

RR (CO)
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