

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2268 of 2018 and
CMP No.14207 of 2018

R.Sudharsan Petitioner

Vs

S.Mageshwaran Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 19.03.2018 passed in I.A.No.21 of 2018 in O.S.No.99 of 2017 on the file of the learned Subordinate Judge, Nilgiris, Conoor and allow this Civil Revision Petition.

For Petitioner : Mr.Ramanathan

For Respondent : Mr.K.F.Manavalan

ORDER

The defendant in O.S.No.99 of 2017 has come up with this revision challenging an order dismissing his application filed under Order VII Rule 11 (a) of the Code of Civil Procedure, seeking rejection of the plaint.

2. The suit is one for recovery of money based on an agreement dated 02.09.2014. It is the claim of the defendant that the agreement is forged and fabricated. The basis of the defence is that the 1st page of the agreement does not contain the signature of the parties. It is also stated that during the course of evidence of PW1 the agreement was marked subject to objection. It is at this stage, the defendant has come up with this application seeking rejection of plaint on the ground that the agreement is not signed in the 1st page.

3. The learned trial Judge had considered the issue and concluded that the said claim of the defendant even if true, cannot form a basis for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.

4. I have heard Mr.Ramanathan, for Mr.J.Franklin, learned counsel appearing for the petitioner and Mr.K.F.Manavalan, learned counsel appearing for the respondent.

5. The learned counsel for the petitioner would vehemently contend that the trial Court erred in dismissing the application and it should have rejected the plaint on the ground that the agreement is forged and fabricated. He would also rely upon the fact that the 1st page of the agreement does not contain the signature of the parties.

6. I am unable to agree with the learned counsel for the petitioner. It is settled law that in an application under Order VII Rule 11 of the Code of Civil Procedure, the Court cannot go into the evidence or examination of the defence. The Court has to go by averments in the plaint. The agreement has also been produced in evidence and marked subject to objection. It will be open to the defendant to prove that the agreement is fabricated. The question of fact as to whether the agreement is true or not, cannot be decided in an application under Order VII Rule 11 of the Code of Civil

Procedure and it cannot form a basis for rejection of the plaint. I therefore do not find any illegality or irregularity in the order of the trial Court. The revision therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2020

vum

Index: Yes/No

Speaking order / Non speaking order

To:

The Subordinate Judge,
Nilgiris, Conoor.

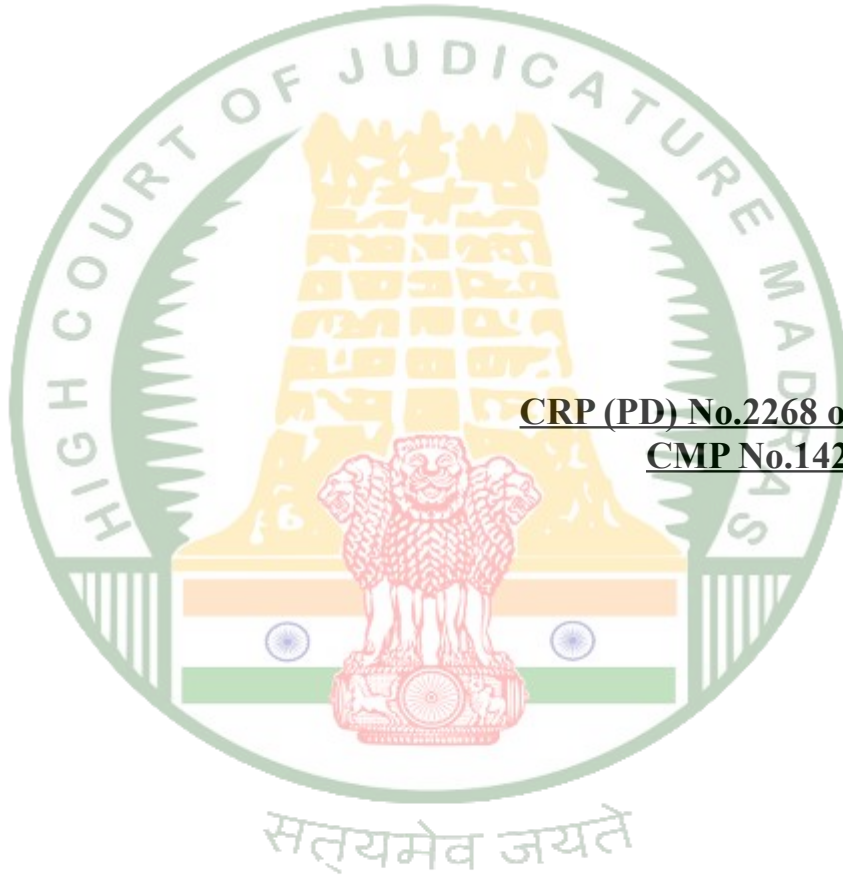


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R.SUBRAMANIAN, J.

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