

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.07.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP.No.1342 of 2020 &
CMP.Nos.7380 & 7381 of 2020

1. M/s.Salem Constructions,
A registered Partneship Firm
Rep. By its Managng Director,
N.Selvam,
Having its Office at
No.335, Vivekanandar Street,
Bharathi Nagar, Maniyanur,
Salem.

2. N.Selvam
S/o.K.Natarajan,
No.335, Vivekanandar Street,
Bharathi Nagar, Maniyanur,
Salem.

3. S.Parimala,
W/o.N.Natarajan,
No.335, Vivekanandar Street,
Bharathi Nagar, Maniyanur,
Salem.

... Petitioners

Vs

1. K.Santhi
W/o.M.Mohan,
No.7, Engineer Apartment,
Sowdeswari Nagar,
Salem – 10.

2. The Commissioner,
Salem Municipal Corporation,
Fort Main Road, Salem – 1.

.. Respondents

Prayer: Revision has been filed under 227 of Constitution of India to set aside the Order dated 11.03.2020 passed in I.A.No.7 of 2020 in O.S.No.741 of 2010 passed by the learned Principal District Munsif, Salem, Salem District and allow this revision.

For Petitioners : Mr.K.Balu

For Respondents : Mr.A.Thiagarajan, Sr. Counsel
Mr.M.Nallathambi

ORDER

This revision has been filed against the Order dismissing the application filed under section 45 of the Evidence Act seeking to examine the signature of the first defendant found in Ex.A.3 with that of her admitted signatures.

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2. It is the contention of the learned counsel for the petitioner that the first defendant executed a retirement deed dated 09.10.2007 which has been marked as Ex.P.3. However, in her written statement she had taken a stand that the signature found in the retirement deed is not her signature. She has

also taken a plea that her signature has been forged in the document. Besides, she has also initiated a criminal complaint in Crime No.19 of 2010, which was taken cognizance by the Judicial Magistrate No.IV, Salem in C.C.No.158 of 2011. Further, she has also filed a Criminal Original Petition before this Court in CrI.O.P.No.18625 of 2012 and the same has been disposed by this Court by an Order dated 10.08.2011. Therefore, it is the contention of the petitioner that unless the signature found in Ex.P.3 is examined by a handwriting expert, the petitioner will not be in a position to prove the document.

3. The learned counsel for the first respondent opposed the application on the ground that the evidence is already over and the signature of the respondent has been forged in the document and only in order to delay the suit proceedings, the application has been filed and there is no merits in the application.

4. The trial Court dismissed the application mainly on the ground that the suit is of the year 2010 and that if the respondent plead forgery, the burden is only on the respondent to prove the forgery and the plaintiff has to

prove his case and it is not necessary to prove the case of the respondent and dismissed the application.

5. Heard the learned counsel appearing for the petitioners and learned Senior Counsel appearing for the first respondent through video conference.

6. The learned counsel for the revision petitioner mainly submitted that the first respondent having executed the retirement deed dated 09.10.2007 had now taken a specific stand that the said document has been forged. Therefore, in order to prove Ex.A.3, expert evidence is necessary. Though there is a delay in seeking such an aid, the delay itself cannot be a ground to non suit the petitioner and ultimately, the truth has to be unearthed.

7. The learned counsel for the first respondent vehemently contended that though there were several opportunities from the inception of the suit, the petitioner has not taken any steps to prove Ex.A.3. Even the witnesses signed in Ex.A.3 have not been examined. Therefore, it is burden of the plaintiff to prove the execution of the document. Having missed the bus all these days, this application has been filed only to delay the suit, particularly, when the suit has been posted for judgment. Further, it is his contention that

admitted documents have not been produced before the trial Court. Therefore, it is his contention that such an application cannot be entertained at a later stage.

8. I have perused the entire materials available on record.

9. The suit has been originally filed for a declaration that the second and third plaintiffs alone are the partners and the first defendant is not a partner of the first plaintiff partnership firm and for a direction to the second defendant to release all the work bills, cheques in the name of the first plaintiff and for consequential injunction. The suit has been filed mainly on the ground that the first defendant has retired from the partnership firm and executed a retirement deed on 09.10.2007 and in order to prove the retirement deed, it is necessary to examine the signature found in Ex.A.3 with the admitted signature of the first defendant found in the sale deed executed by the first defendant in the year 2008. Whereas, it is the contention of the first defendant that Ex.A.3 is a forged one and trial Court has mainly dismissed the application on the ground of delay and further to prove the fabrication, the burden is only on the first defendant and the plaintiff is not required to prove the alleged forgery etc and dismissed the application.

10. Of course, the initial burden is always on the plaintiff to prove the document. Though there were witnesses who have signed in Ex.A.3, the plaintiff failed to examine any of the witnesses signed in the document. Similarly, it is the specific case of the first defendant that the signature found in the retirement deed is not that of hers and the document has been forged. However, this Court also cannot lose sight of the fact that the first defendant herself has filed an application in I.A.No.1714 of 2010 to send the document for expert opinion, but the application has been subsequently withdrawn by her.

11. It is relevant to note that the first defendant has also lodged a police complaint against the plaintiff for the alleged forgery of Ex.A.3, besides she has also moved an application in CrI.O.P.No.16258 of 2018 seeking direction. While disposing of the above petition, this Court directed the petitioner, namely the first defendant herein, to approach the Investigating Officer along with necessary application and proceed with the matter. This Order has been passed on 10.08.2012. Despite the opportunity given to the first defendant, she has not filed any materials before the Investigating Officer and no steps have been taken so far. It appears that the

investigating Officer also has not examined the document forensically to unearth the alleged forgery.

12. Be that as it may. Now the issue revolving around the suit is whether the first defendant has retired from the partnership company or not. The plaintiff relied on Ex.A.3 said to have been executed by the first defendant. Whereas, the first defendant has pleaded forgery. Of course, the initial burden always lies on the plaintiff to prove the document and prove its execution. At any event, to unearth the truth, the aid of an expert is necessary to find out the veracity of the parties. Further, in a Civil Court, the voyage of trial is to unearth the truth. Such being the matter, this Court is of the view that merely because there is a delay in filing such an application, the substantive right of the parties cannot be defeated. If the expert evidence come on record with regard to Ex.A.3, the same infact enable the trial Court to appreciate the rival contentions along with their pleadings and for deciding the issues and to arrive at a just conclusion.

13. Accordingly, the Order of the trial Court is set aside and the trial Court is directed to appoint an Advocate Commissioner from the local bar within one week for the date of receipt of a copy of this Order and hand over

Ex.A.3 and also the sale deed dated 12.03.2008 and the partnership deed dated 01.12.2006 to the Advocate Commissioner in a sealed cover for examining the documents by a handwriting expert. The handwriting expert shall examine all the documents and report has to be filed before the trial Court. Thereafter, the trial Court, after giving opportunity to both the parties shall dispose of the suit within a period of six months. It is made clear that till such exercise is made, the trial Court shall not proceed with the judgment in the suit.

14. With the above observations, this revision is allowed. The registry shall communicate a copy of this Order to the trial Court immediately, without any further delay.

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01.07.2020

ggs /vrc

To,

The Principal District Munsif,
Salem

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N.SATHISH KUMAR, J.

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