

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.3148 of 2018 and
CMP No.18025 of 2018

Kalavathi

... Petitioner

Vs

Renuka Devi

... Respondent

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order passed in I.A.No.1321 of 2018 in O.S.No.34 of 2017 dated 13.08.2018 passed by the learned III Additional District and Sessions Judge Gobichettipalayam.

For Petitioner : Mr.S.Parthasarathy

For Respondent : No appearance

ORDER

This revision is by the defendant in O.S.No.34 of 2017 challenging the dismissal of her application seeking reference of the suit Promissory Note to a handwriting expert, to have it compared with the admitted signature in a registered Sale Deed executed by her on 01.08.2014.

2. The suit was launched by the plaintiff/respondent herein where recovery of a sum of Rs.12,84,666/- claiming that the petitioner herein had borrowed a sum of Rs.10 lakhs and had executed the suit Promissory Note as security for repayment. The defendant entered appearance and filed a written statement denying the execution of the Promissory Note on 14.02.2018. Within three hearings, before trial could commence, the defendant has come up with this application on 22.06.2018.

3. This application was resisted mainly on the ground that it is belated.

4. The learned trial Judge, unfortunately, accepted the contention of the respondent and dismissed the application. The reference of a

disputed document to a handwriting expert under Section 45 of the Evidence Act is a method of proving or disproving the document. When a defendant in Promissory Note suit, takes a plea that the suit Promissory Note itself is a forged instrument and comes out with an application at a fairly early stage in the litigation, seeking a reference to the expert, such application should not be dismissed as a matter of routine by the Court. No doubt, the burden is on the plaintiff to prove execution. But if the defendant is to wait till the plaintiff lets in evidence, and thereafter file an application, there is every possibility of that application being categorised as an attempt to delay the proceedings in the suit. Where a defendant/respondent who denies the execution of the instrument, comes up with an application for reference of the instrument to an expert, such defendant is only attempting to place the best evidence before Court. In such cases, the Court should not, in my considered opinion, reject the application, thereby, denying itself an opportunity to have the best evidence before it.

5. In view of the above, the order of the trial Court is set aside and the Civil Revision petition is allowed. The application in I.A.No.1321 of 2018 will stand allowed. The trial Court is directed to appoint a

Commissioner to take the disputed document, namely, the suit Promissory Note along with the admitted signature of the defendant to the finger print expert and obtain his opinion. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order / Non Speaking order
vum

To

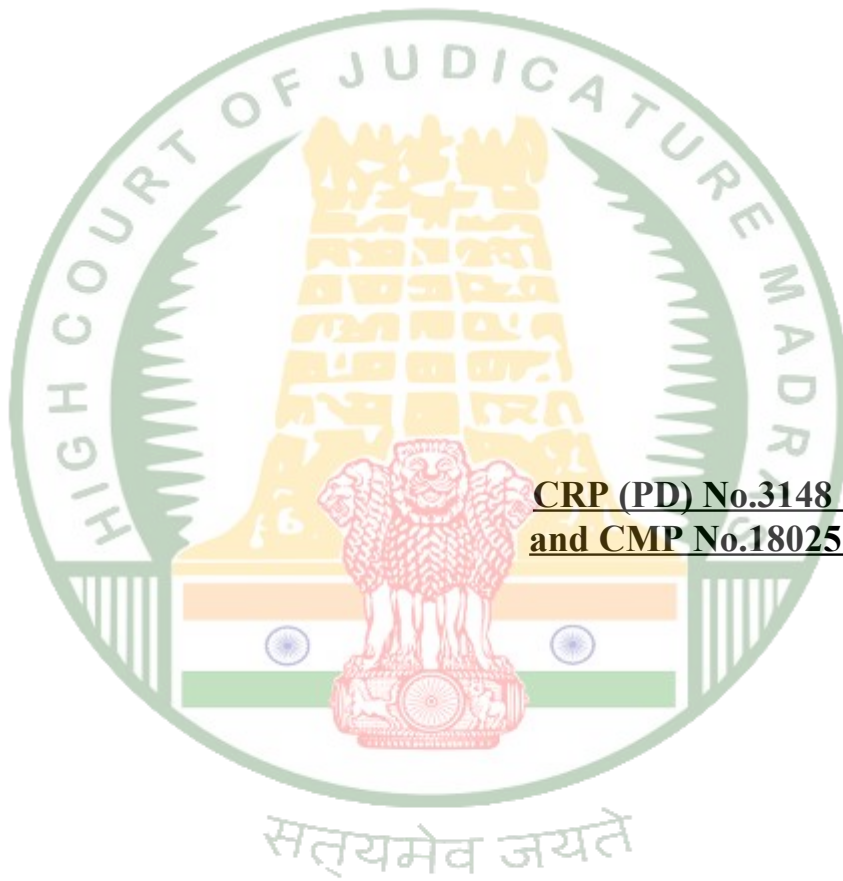
The III Additional District and Sessions Judge,
Gobichettipalayam.



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R.SUBRAMANIAN, J.

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