

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2020

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.R.P.No.3181 of 2018
and
C.M.P.No.18194 of 2018

Sampath ... Petitioner/Defendant

Vs.

Kamalakkannan ... Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the application in I.A.No.569 of 2012 in O.S.No.138 of 2011 dated 23.04.2018 on the file of Additional Subordinate Judge, Thiruvannamalai, is contrary to law, manifestly erroneous and wholly unjust.

For Petitioner : Mr.V. Lakshminarayanan

O R D E R

The challenge in this revision is to the order of the trial Court viz., Additional Sub Judge, Thiruvannamalai made in I.A.No.569 of 2012 in O.S.No.138/2011 dismissing the same.

2. The said application was filed by the petitioner herein who is the defendant in the suit seeking to refer the suit promissory note for expert's opinion.

3. The suit was filed on 20.07.2011 for recovery of money due on a promissory note said to have been executed by the defendant on 20.07.2008. The defendant filed a written statement on 27.02.2012. The defendant took a plea that the promissory note was not executed by him and signature found in the promissory note was forged. Even along with the written statement defendant filed an application in I.A.No.569/2012 seeking to refer the document for expert's opinion. He also stated that comparison can be made with his admitted signature found in the salary register maintained by his employer namely Su Vallavetti Middle School.

4. This application was resisted by the plaintiff claiming that this application has been filed only to drag on the proceedings. The counter itself was filed on 19.03.2013. However, the said application was kept pending till 23.04.2018, despite the counter having been filed on 19.03.2013 itself.

5. By the order impugned in this revision, the learned Subordinate Judge has dismissed the application on two grounds. The learned Subordinate Judge found that the application has been filed with intention to drag on the proceedings and the comparison is sought for with signature in different language. He has also pointed out that while the disputed signature is in English, the signature found in the salary register are in Tamil. It is not known as to how the learned Subordinate Judge has come to the conclusion that the signatures in the salary register are in Tamil without those documents being made available. The other reasoning namely the application has been filed with an intention to drag on the suit is wholly unfounded. As already pointed out, the application was filed even along with the written statement. The counter was also filed in March 2013. For reasons best known the trial Court had kept it pending for nearly five years. It was taken up for disposal only in April 2018 and has been dismissed on the ground that it has been filed to drag on the proceeding. This approach is wholly unsatisfactory. The order of the trial Court deprives the defendant in the suit of a chance to let in evidence.

6. The defendant who denies the signature and comes forward with an application seeking comparison at earliest possible opportunity cannot be shown the door on frivolous and vexatious grounds as has been done by the trial Court. I find the mistake of the Court has affected the rights of the defendant to lead appropriate evidence. I am therefore, convinced that the order impugned in this revision petition is allowed to stay, it will cause failure of justice. Therefore, I have no hesitation in allowing the revision petition and setting aside the impugned order.

7. The trial Court is directed to appoint an Advocate Commissioner to take the suit promissory note along with the admitted signatures of the defendant to the Government expert, Chennai and have it examined. The order appointing a Commissioner shall be made within 15 days from the date receipt of copy of this order. The petitioner herein is directed to produce contemporaneous admitted signature in the same language namely English before the Court below within 15 days from the date of receipt of copy of this order.

8. Accordingly, civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO MDU)

//True copy//

Sub Assistant Registrar

AT

To

The Additional Subordinate Judge,
Thiruvannamalai,

C.R.P.No.3181 of 2018
and
C.M.P.No.18194 of 2018

SAI (CO)
GMY (29/09/2020)



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