

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020

PRONOUNCED ON : 25.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.1165 of 2016

CMP.No.6359 of 2016

(Through Video Conferencing)

C.Nehru

Petitioner

Vs

1. A.K.Chinnu

2. Rasammal

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 115 of CPC, to set aside the fair and decreetal order dated 8.8.2015, passed in IA.No.370 of 2014 in AS.No.21 of 2013, by the I Additional District Judge, Salem.

For Petitioner : Mr.Sivaprakasam for M/s.P.T.Rama Devi

For Respondent : M/s.Leela Raman

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal order dated 8.8.2015, passed in IA.No.370 of 2014 in AS.No.21 of 2013, by the I Additional District Judge, Salem.
2. The facts of the case, in a nutshell, are that the Plaintiff is the Petitioner and the Defendants are the Respondents. The Petitioner has filed OS.No.71 of 2006, for recovery of money and the said suit was decreed. As against the

same, the Defendants have filed the appeal before the lower appellate court. In the appeal, the Defendants have file the application to send for the documents, Ex.A1, A3, A4 and Ex.B1 and signatures and LTI of the Defendants to be obtained in the presence of Chief Ministerial Officer of the Court through an Advocate Commissioner to the Government Forensic Lab, Mylapore, Chennai, for getting opinion, regarding the signature and LTI of the Defendants. Since the said application was allowed, this Civil Revision Petition has been filed by the Plaintiff.

3. The learned counsel for the Petitioner has submitted that only signatures that are contemporaneous can be sent for expert opinion and that when the documents sought to be sent for expert opinion are not contemporaneous documents, comparison of signatures found in the said documents cannot be made and hence, the impugned order, ordering to send the documents for comparison to the Forensic Lab is erroneous and consequently, this Civil Revision Petition is to be allowed. The learned counsel has relied on **2008 1 CTC 816 (Ammani Ammal Vs. Dhanalakshmi Bank Limited and others)**.
4. The learned counsel for the Respondents has submitted that to prove the defence and to disprove the case of the Respondents and to prove the fabricated signatures, opinion of an handwriting expert is necessary and hence, the court below is right in sending the documents for expert opinion and accordingly, this Civil Revision Petition is to be dismissed.
5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.

6. The suit was filed for recovery of money, based on a promissory note. The Defendants, by filing a written statement, took a stand that the Plaintiff has fabricated the suit promissory note, by forging the signatures and thumb impressions of the Defendants. The Defendants have filed an application in IA.No.304 of 2010 in the suit, for comparison of the signatures and the said application was dismissed on 16.08.2010. Challenging the same, CRP.PD.No.4455 of 2010 was filed and the CRP was allowed on 11.04.2014, on condition that the Defendants shall deposit a sum of Rs.40,000/- to the credit of the suit.
7. The pendency of the Civil Revision Petition was not brought to the notice of the Trial Court. During the pendency of the said Civil Revision Petition, the suit was decreed on 09.04.2012. As against the same, the appeal was filed and the memo filed for restoration of IA.No.304 of 2010 was rejected, directing the Petitioners to file a separate petition. Accordingly, the present application has been filed, seeking the reliefs as stated above. In the mean time, in compliance with the said order of the High Court, the Defendants have also deposited the amount into the Court.
8. The first appeal is a continuous proceedings to the original suit. Since there was already an order of this Court, giving liberty to the Trial Court to verify the thumb impressions found in the suit promissory note with the admitted thumb impressions, in case there are no contemporaneous documents available and to file a report in that regard and to appoint an Advocate Commissioner to take the documents containing the thumb impression to the

A.A.NAKKIRAN, J.

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Government Forensic Lab, for the said exercise, the lower appellate court is justified in allowing the application, by the impugned order, which warrants no interference.

9. In fine, this Civil Revision Petition is dismissed. The trial court is directed to dispose of the appeal, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected MP is closed.

25.02.2021

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The I Additional District Judge, Salem

Pre-Delivery Order in
CRP(NPD)No.1165 of 2016

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