

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD)No.915 of 2021
and CMP.No.7458 of 2021

K.Sivakumar

... Petitioner

Vs.

1.Ezhilarasi @ Jessulla Ezhilarasi
Represented by Power Agent
V.C.Ravichandran

2.K.Nirmala
3.K.Ramya
4.K.Lavanya
5.K.Sivakami
6.K.Durga

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to allow the Civil Revision Petition setting aside the Fair and Decretal Order dated 10.02.2021 in I.A.No.658 of 2019 in O.S.No.403 of 2006 passed by the learned II Additional Subordinate Judge, Salem.

For Petitioner : Mr.K.Sivasubramanian
For Respondents : Mr.P.Jagadeesan

ORDER

The 2nd defendant in O.S.No.403 of 2006, now pending on the file of the learned II Additional Subordinate Court at Salem is the revision petitioner herein. The suit had been filed on the strength of three promissory notes alleging that one T.K.Kuppusamy had borrowed a sum of Rs.4,00,000/-. The defendants in the suit are the legal representatives of the said T.K.Kuppusamy. The 2nd defendant / present revision petitioner had filed his written statement and issues were framed. Parties were initiated to adduce evidence. Among other contentions raised in the written statement, there was a total denial of the execution of promissory notes. Pending the suit, an application was filed to forward the disputed promissory notes for Forensic Examination. Along with the said promissory notes, documents were also sent for a comparison of the signature.

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2.It is the contention of Mr.K.Sivasubramanian, learned counsel for the Civil Revision Petitioner that originally, a letter was received on 27.12.2018 that the report was made ready. However, on an earlier day, it had been stated that further documents are required to carry out effective comparison of the

signature. It is contended that four vakalats and two memos were then forwarded. It is the contention of the present revision petitioner that without taking into consideration the said documents, a report had been prepared and had been submitted before the Court. It is therefore claimed that the report having not been prepared in the manner known to law or by comparing the questioned signatures with all admitted signatures, the entire report should be eschewed.

3.On the basis of the above contentions, on an application was filed under Section 151 CPC, in I.A.No.658 of 2019, calling upon the Court to eschew the report. The Court passed an order dated 10.02.2021 dismissing the said application which order is the subject matter of the present Revision Petition.

4.Mr.K.Sivasubramanian, learned counsel for the revision petitioner questioned the said order and also the report itself by stating that four vakalats and two memos had been forwarded for comparison and that there is no possibility that they would have been compared with the disputed signatures in the promissory notes. It is his contention that the report had been prepared

without such comparison. It is therefore stated that the present revision petitioner / 2nd defendant will suffer immeasurable hardship since the findings in the said report now stands at the face of the present revision petitioner.

5.I am not able to understand the said contention. Any forensic report is only a document. The contents in said document have to be spoken to and such statements have to withstand cross examination. The witness during the course of examination will have to explain the manner in which they came to the particular conclusion which had been stated in the report and the nature of the documents which had been used for comparison of the signatures. The evidence has to be tested in cross examination. That is the entire focus of any civil trial.

6.Any statement of a witness is only a statement. An expert gives only an opinion. The revision petitioner should take up the responsibility of summoning the said expert, questioning him as to the basis on which he prepared the report and questioning him on the basis of the nature of documents which he had used for comparison of the signatures, the manner in which he compared the signatures, the points of similarities and then the

reasons for his opinion. All these aspects will have to be tested during cross examination.

7.The petitioner cannot simply maintain an application for eschewing the entire report. I am confident that the learned II Additional Subordinate Judge, Salem would give adequate opportunity to the present revision petitioner to not only summon the expert who had prepared the Report, also give sufficient opportunity for the Report to be tested during cross examination and also give sufficient opportunity for the expert to be subjected to cross examination. That is the manner in which the trial should proceed. The said Report can be considered as evidence only thereafter. The learned Judge will have to analyze the evidence on record not only on the basis of the report but also on other evidence and statements made and thereafter take a considered decision whether to accept the report or to reject the report. The Court cannot just wish away or eschew the report. There is also no provision for the same.

8.For the reasons above mentioned, I am not inclined to allow the revision.

C.V.KARTHIKEYAN, J.,

cse

9.With the said observations, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No order as to cost.

27.04.2021

Index:Yes/No
Internet:Yes/No
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To

The II Additional Subordinate Judge, Salem.



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