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C.R.P. (PD) .Nos.3877 & 3878 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.3877 & 3878 of 2016

and

C.M.P.No.19725 of 2016

Maragathamani

.. Petitioner
(in both cases)

Vs.

1.P.Thavamani

2.P.Vanitha

3.P.Kalpana

4.Bagiyalakshmi

5.Ramaraj

.. Respondents
(in both cases)

Prayer: These Civil Revision Petitions are filed under Section 115 of C.P.C., against the fair and decretal orders dated 13.10.2015 passed in I.A.Nos.24 & 25 of 2015 in A.S.No.8 of 2014 on the file of the Sub Court, Pollachi.

In both cases:

For Petitioner	: Mr.R.Kannan
For RR 1 to 3	: Mr.L.Mouli
For RR 4 & 5	: Mr.C.Veeraraghavan



COMMON ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

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These Civil Revision Petitions are filed against the fair and decretal orders dated 13.10.2015 passed in I.A.Nos.24 & 25 of 2015 in A.S.No.8 of 2014 on the file of the Sub Court, Pollachi.

2.The issues involved in both the Civil Revision Petitions are one and the same and hence, these Civil Revision Petitions are disposed of by this common order.

3.The petitioner is the plaintiff in O.S.No.65 of 2004 on the file of the District Munsif Court, Pollachi and appellant in A.S.No.8 of 2014 on the file of the Sub Court, Pollachi. The petitioner filed the said suit against the respondents for specific performance of agreement of sale dated 25.06.1991 executed by deceased R.Palanisamy, husband of respondents 1 & 4 and father of respondents 2, 3 & 5. The said suit was dismissed by the judgment and decree dated 19.12.2013. Against the said judgment and decree, the petitioner filed First Appeal in A.S.No.8 of 2014. Pending First Appeal, the petitioner filed the present two applications, I.A.No.24 of 2015 to send the register maintained by the Sub-Registrar Office, Pollachi dated 14.10.1988 in Book



No.4, Document No.91/1988 along with disputed signature and I.A.No.25 of 2015 to call for the register maintained by the Sub-Registrar Office, Pollachi dated 14.10.1988 in Book No.4, Document No.91/1988.

4. According to the petitioner, the deceased R.Palanisamy entered into agreement of sale dated 25.06.1991 with her to sell his suit property. He made endorsements with agreement of sale dated 25.06.1991, on 20.09.1991, 15.06.1992, 17.10.1992, 31.07.1993 and 26.10.1993, which were marked as Exs.A1, A7 to A11 respectively. The deceased R.Palanisamy issued receipt to the petitioner on the date of agreement of sale, which was marked as Ex.A2. The respondents have denied the execution portion of agreement of sale by the deceased R.Palanisamy, Ex.A2 / receipt and also other endorsements in Exs.A7 to A11. According to petitioner, the Trial Court dismissed the suit on the ground that petitioner has not taken any steps to obtain expert opinion with regard to genuineness of Exs.A1, A2, A7 to A11. The learned Trial Judge has erroneously fixed burden on the petitioner to prove the genuineness of signature in Ex.A1, instead of placing the burden on the respondents to prove that signature is not genuine. The deceased R.Palanisamy and his brother Srinivasan borrowed a sum of Rs.20,000/- from the petitioner on 14.10.1988 and executed promissory note, which was registered on the same



day before the Sub-Registrar Office, Pollachi and the petitioner has come out with the present two applications for the relief stated above.

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5.The respondents 1 to 3 filed counter affidavits in both the applications and denied the execution of agreement of sale as well as receipt and other endorsements. They also denied the fact that the deceased R.Palanisamy and his brother Srinivasan borrowed money and executed the document. The document now sought to be compared with agreement of sale and other documents are not of contemporary period, the same cannot be compared with and cannot get opinion from the hand writing expert and prayed for dismissal of both the applications.

6.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed both the applications holding that the documents now sought for comparison are not of contemporary period and expert will not give opinion, unless admitted signature in a document of contemporary period is produced.

7.Against the said orders of dismissal dated 13.10.2015 passed in I.A.Nos.24 & 25 of 2015, the petitioner has come out with the present Civil



Revision Petitions.

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8.The learned counsel appearing for the petitioner contended that the learned Judge ought to have considered the application in I.A.No.24 of 2015 for sending the disputed signature of the deceased R.Palanisamy with his admitted signature for expert opinion independently and ought not to have dismissed the application in I.A.No.24 of 2015 in view of the dismissal of I.A.No.25 of 2015. The learned Judge ought to have allowed the application in I.A.No.24 of 2015 as the burden is entirely on the respondents to prove that the signature in the said documents are not that of the deceased R.Palanisamy by producing admitted signatures. The Lower Court has failed to see that in a suit for specific performance of an agreement of sale dated 25.06.1991 / Ex.A1, the burden of proof as it is forged one lies only on the person, who denies it as per law. The respondents / defendants who disputed the signature, ought to have produced the admitted signatures of the deceased, which were under their custody. The learned Judge ought to have allowed the applications, called for the document in the interest of justice and prayed for allowing the Civil Revision Petitions.

9.The learned counsel appearing for the respondents 1 to 3 and 4 & 5



separately submitted that the petitioner has not produced any document containing the signature of the deceased R.Palanisamy of contemporary period. The petitioner filed the present applications only to protract the appeal filed by her and the learned Judge considered the entire materials and rightly dismissed both the applications. There is no error in the order of the learned Judge and prayed for dismissal of both the Civil Revision Petitions.

10. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the entire materials on record.

11. From the materials on record, it is seen that the petitioner filed suit in O.S.No.65 of 2004 for specific performance of agreement of sale dated 25.06.1991 executed by deceased R.Palanisamy and the endorsement made therein against the respondents, who are the legal heirs of the deceased R.Palanisamy. The respondents denied that deceased R.Palanisamy executed agreement of sale and endorsements therein. They also denied the signatures found in the said document are forged one. After trial, the suit was dismissed by the judgment and decree dated 19.12.2013. Thereafter the petitioner filed First Appeal in A.S.No.8 of 2014 challenging the judgment and decree dated



19.12.2013 passed in O.S.No.65 of 2004 on the file of the District Munsif Court, Pollachi. In the First Appeal, the petitioner filed application in I.A.No.24 of 2015 to send the disputed signature and admitted signature in the Register called for from the Sub-Registrar Office, Pollachi for expert opinion. She also filed I.A.No.25 of 2015 to call for the Register maintained in the Sub-Registrar Office, Pollachi dated 14.10.1988 in Book No.4, Document No.91/1988. According to the petitioner, even though the burden is on the respondents to prove that signature in the agreement of sale and endorsements are forged one, the learned Judge erroneously placed the burden on the petitioner. The petitioner in the application contended that the deceased R.Palanisamy and his brother Srinivasan borrowed a sum of Rs.20,000/- from the petitioner and executed a promissory note on 14.10.1988, which was registered on the file of the Sub-Registrar Office, Pollachi on the same day. It is the further case of the petitioner that the Register maintained by the Sub-Registrar Office, Pollachi contains admitted signature of the deceased R.Palanisamy, it must be called for and sent along with disputed signature to get opinion from the expert. The respondents are not only disputing the execution of agreement of sale, but also disputing the alleged endorsements made by the deceased R.Palanisamy and also disputing the execution of promissory note by the deceased R.Palanisamy. The



respondents also took a stand that the promissory note is not a document of contemporary period and therefore, it cannot be relied on to compare with the disputed signature.

12.From the materials on record, it is seen that the alleged agreement of sale is dated 25.06.1991. There are five endorsements in the agreement of sale alleged to have been made by deceased R.Palanisamy. Only the first endorsement is on 20.09.1991, which is within three years of execution of promissory note dated 14.10.1988. All other endorsements are beyond three years. It is well settled that admitted signature in a contemporary period means within three years of disputed signature. In the present case, except Ex.A1 / agreement of sale, Ex.A2 / receipts and Ex.A7 / first endorsement made in Ex.A1 on 20.09.1991, all other documents viz., Exs.A8 to A11 containing the signature of deceased R.Palanisamy are beyond the period of three years. When the disputed signature is beyond the period of three years than the admitted signature, the handwriting expert will not consider the same and give his opinion. Further, the respondents are denying the execution of promissory note and they are not admitting the signature in the promissory note dated 14.10.1988 as that of the deceased R.Palanisamy. In an appeal, additional evidence viz., both oral and documentary can be permitted to let in



only if party seeking to let in additional evidence satisfies the provisions of Order XLI Rule 27 of the Code of Civil Procedure. The said provision reads as follows:

“Rule 27 of Order XLI of the Code of Civil Procedure:

27. Production of additional evidence in Appellate Court:-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,
the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

As per Order XLI Rule 27 (a) & (aa), additional evidence can be permitted only when the party proves that in spite of his due diligence, he was



not aware of said document and inspite of due diligence, he could not produce the same before the Trial Court. In the present case, the petitioner is seeking to call for the Register that contains the signature of the deceased R.Palanisamy in the promissory note dated 14.10.1988 to prove that signatures in the disputed document are not genuine.

13. According to the petitioner, the deceased R.Palanisamy and his brother borrowed a sum of Rs.20,000/- from her, executed a promissory note dated 14.10.1988 and registered the same on the file of the Sub-Registrar Office, Pollachi on the same day. In that case, the petitioner is aware of existence of promissory note and signature of the deceased R.Palanisamy in the Sub-Registrar Office, Pollachi, when the promissory note was registered. The petitioner has not given any reason for not called for the said register before the Trial Court and sought for comparison of signature of the register with that of the disputed signature. It is not the case of the petitioner that inspite of due diligence he was not aware of promissory note and register or could not produce the same before the Trial Court. The learned Judge considered entire materials in proper perspective and dismissed I.A.No.25 of 2015. When the application to call for register from the Sub-Registrar Office, Pollachi is dismissed, I.A.No.24 of 2015 seeking to send the register along



with disputed signature does not arise.

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14. For the above reasons, both the Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

19.11.2021

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Index : Yes / No

Internet : Yes / No

To

The learned Subordinate Judge,
Pollachi.



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V.M.VELUMANI, J.
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