

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3221 of 2017
and C.M.P.No.15103 of 2017

1.Shamshath Begum

2.Aprar Hussain

.. Petitioners

Vs.

R.Chandra

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.02.2017 made in I.A.No.57 of 2016 in O.S.No.192 of 2014 on the file of the Additional Special Court, Krishnagiri.

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For Petitioners : Mr.T.Arockiadass

for M/s.Dass and Viswa Associates

For Respondent : Mr.P.Mani

ORDER

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

Civil Revision Petition is filed against the fair and decretal order dated 21.02.2017 made in I.A.No.57 of 2016 in O.S.No.192 of 2014 on the file of the Additional Special Court, Krishnagiri.

2.The petitioners are defendants and respondent is plaintiff in O.S.No.192 of 2014 on the file of the Additional Special Court, Krishnagiri. The respondent filed the said suit for recovery of money based on the promissory note dated 10.03.2013 executed by one B.Sardhar, husband of 1st petitioner and father of 2nd petitioner.

3.According to the petitioners, the said Sardhar did not borrow money from the respondent and did not execute promissory note. The said promissory note is forged one and created by one Sathi, who is working in Police Department, in the name of his mother, the respondent.

The said Sathi has also forged and created another pronote in the name of his mother Chandra, the respondent herein and filed O.S.No.192 of 2014 against the petitioners. In such circumstances, the petitioners filed I.A.No.57 of 2016 in O.S.No.192 of 2014 under Order XVI Rule 10A of C.P.C. and Section 45 of Indian Evidence Act, to appoint Court Commissioner and to direct him to compare the disputed suit promissory note dated 10.03.2013 and admitted signature in the registered document dated 25.08.1998 before the Forensic and Science Department and to get an opinion about the signature of Sardhar in the suit pronote.

4.The respondent filed counter affidavit denying all the averments made in the affidavit filed by the petitioners and stated that the relief sought for in the present I.A. to compare the signature in the partition deed dated 25.08.1998 is not of same year. For comparing the signature, both the documents should have come into existence at or about the same time. Due to passage of time and age, there would be some variations in the signature. The execution of the suit promissory note can be proved by

examining the attestors and scribe and hence, it is not necessary to send the suit promissory note to the handwriting expert and prayed for dismissal of the said I.A.

5.The learned Judge considering the averments made in the affidavit, counter affidavit and 3rd defendant, the mother of Sardhar, who has submitted to a decree by filing memo dated 17.06.2015, dismissed the I.A.

6.Against the said fair and decretal order dated 21.02.2017 made in I.A.No.57 of 2016 in O.S.No.192 of 2014, the petitioners have come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioners contended that the signature in the suit promissory note is disputed and hence, the same has to be proved with admitted signature of Sardhar. The suit has been filed after the death of Sardhar and liability is fastened on the petitioners

and the petitioners can challenge the signature in the suit promissory note. The learned Judge erred in dismissing I.A. relying on the memo filed by the 3rd defendant, mother of Sardhar, who is not having cordial relationship with the petitioners and she is not having any property to satisfy the decree. If any decree is passed, it would affect the rights of the petitioners. The difference in the signature of Sardhar in the partition deed and promissory note is visible in the naked eye. When the petitioners are disputing the signatures, they have to prove the same. The learned Judge dismissed the I.A. on technical ground. The learned Judge ought to have given an opportunity to the petitioner to prove the signature of late Sardhar and prayed for allowing the Civil Revision Petition.

8. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent and perused the entire materials on record.

9. From the materials available on record, it is seen that the suit

filed by the respondent for recovery of money is based on the promissory note alleged to have been executed by one Sardhar, who is the husband of 1st petitioner and father of the 2nd petitioner. The petitioners filed written statement and denied the borrowing and also disputed the signature in the suit promissory note. When they dispute the signature in the suit promissory note, as rightly submitted by the learned counsel for the petitioners, it is for them to prove their claim. When the signature in the pronote is disputed, it can be compared with admitted signature to prove that signature in the suit pronote is forged. But admitted signature must be of the contemporary period and it is settled that admitted signature must be within three years from the date of disputed signature.

10. In the present case, the petitioners have produced partition deed dated 25.08.1998, in which the said Sardhar has signed. The partition deed is 15 years old to the suit pronote. Due to lapse of time, there will be some variations in the signature in the partition deed as well as suit promissory note. The learned Judge, apart from giving various reasons

for dismissal of I.A. filed by the petitioners, has also held that the petitioners have not produced any admitted signature of contemporary period. In view of the fact that the petitioners have not produced any document of contemporary period, the petitioners are not entitled for the relief sought for in the present I.A. At the same time, the findings of the learned Judge that the petitioners, after death of Sardhar cannot question the signature in the promissory note and 3rd defendant, mother of Sardhar submitted to a decree admitting the signature of Sardhar and hence, the petitioners cannot challenge the signature in the promissory note, are erroneous and are liable to be set aside and are hereby set aside.

11.The learned counsel appearing for the respondent submitted that the respondent's side evidence was over, D.W.1 was also cross-examined and the suit was posted for further evidence of defendants' side. In view of the same, the learned Judge is directed to dispose of the suit in O.S.No.192 of 2014, without being influenced by the order passed in the I.A., as expeditiously as possible, in any event, not later than six months.

12. When the signature of the party is disputed, apart from getting opinion from the handwriting expert, the Court has also power to compare the disputed signature with admitted signature and give a finding on that. If the petitioners produced any document during trial containing admitted signature of Sardhar of contemporary period of promissory note i.e., within three years from the date of promissory note, it is open to the learned Judge to compare the signature and come to a conclusion with that of disputed signature in the promissory note.

13. With the above direction and observation, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

24.08.2021

Index : Yes/No

Internet: Yes/No

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V.M.VELUMANI,J.

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To
The Additional Special Judge
Krishnagiri.



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