



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 08.04.2021

Pronounced on : 08.06.2021

WEB COPY

CORAM
THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(PD) (MD) .No.76 of 2021
and
CMP(MD)No.533 of 2021

Chinnadurai : Petitioner / Petitioner / Defendant

Vs.

Akkumari : Respondent / Respondent/ Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order dated 31.08.2020 in I.A.No. 1 of 2019 in O.S.No.5 of 2017 on the file of the District Munsif Court, Nilakkottai and set aside the same.

For Petitioner : Mr.A.Sivasubramanian
For Respondent : Ms. M. Rajeswari

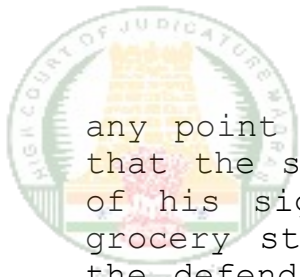
ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2019 in O.S.No.5 of 2017, dated 31.08.2020 by the learned District Munsif, Nilakkottai, dismissing the application filed under Order 16 Rule 6 CPC, seeking orders directing the Sub-Registrar, Nilakkottai to produce the filing sheet in connection with the mortgaged deed executed by the petitioner and another in favour of Canara Bank, Pallapatti Branch.

2.For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking/status before the trial Court.

3.The revision petitioner is the defendant and the respondent/plaintiff has laid the suit in O.S.No.5 of 2017 on the file of the District Munsif Court, Nilakkottai to recover the amount with interest due on a promissory note, dated 12.12.2014 alleged to have been executed by the revision petitioner in favour of the respondent.

4.The defendant has taken a specific defence in the written statement that he has not borrowed any amount from the plaintiff at



any point of time nor executed any promissory note in her favour; that the signatures found in the suit promissory note are not that of his signatures, that himself and one Velkumar were running a grocery store as Nellai Maligai Store at Pallapatti jointly; that the defendant subsequently came to know that the said Velkumar had taken loans from various persons by giving promissory notes forging the signatures of the defendant; that the defendant has then lodged a complaint before the Ammayanaikanur Police and on enquiry, the said Velkumar had admitted the same and agreed to settle the loan amounts; that the said Velkumar in the panchayat has admitted that he had taken a loan of Rs.1,00,000/- from one O.S.Onnappan by giving a promissory note forging the signature of the defendant, that he had agreed to repay the loan amount to the said Onnappan and the said Onnappan had also agreed for the same; that subsequently the said Velkumar has filed a petition in I.P.No.6 of 2016 to declare himself as an insolvent against 67 persons including the said Onnappan, that the said Onnappan had setup his close relative the plaintiff herein to file the above suit with the promissory note alleged to have been taken from the said Velkumar and that therefore, the defendant is not liable for the suit claim. More particularly, the defendant has also taken a stand in the written statement itself that in order to prove the suit promissory note does not contain his signature, is going to file an application for the signature examination at a later point of time.

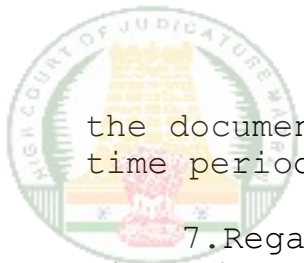
5.It is not in dispute that the defendant has filed a petition in I.A.No.829 of 2018, seeking orders directing the Manager of Canara Bank Pallapatti, to produce the loan application containing the signatures of the defendant for the purpose of sending the document along with the disputed pronote to the expert for comparison and report; that after enquiry the said application was allowed on 22.01.2019 and that subsequently, the Bank Manager of the Canara Bank has informed that the document sought for i.e., is the loan document was not available with them. Thereafter, the defendant has come forward with the above application, seeking orders to direct the Sub-Registrar, Nilakkottai to produce the filing sheet of the mortgage deed executed by himself and his erstwhile partner Velkumar, while mortgaging their property. The learned District Munsif, after enquiry, has passed the impugned order on 31.08.2020, dismissing the said application. Aggrieved by the said dismissal, the defendant has come forward with the present revision.

6.The reasons assigned by the learned District Munsif for dismissing the application are :

(i) The defendant has not furnished the particulars of the mortgage deed such as registration number, date, etc.;

(ii) The defendant has not even filed any application seeking permission to send the disputed document along with the document containing his admitted signatures to expert for opinion ;

(iii) The disputed document i.e., the suit promissory note and



the document now sought to be produced are not within three years of time period.

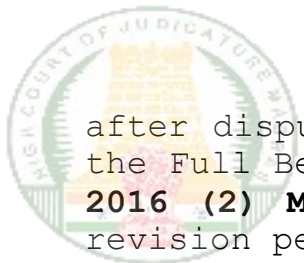
7.Regarding the first ground, the defendant in the affidavit filed in support of the above petition has specifically stated that on 11.04.2011 himself and Velkumar had mortgaged their house property with the Canara Bank, Pallapatti Branch and executed the mortgage deed in favour of the Bank. It is pertinent to mention that the plaintiff has not specifically disputed the above factual aspects nor his case that no such document was in existence. Merely because, the registration number and other particulars of the document are not furnished in the petition, the same cannot be considered as a reason or ground for dismissing the application itself.

8.As rightly contended by the learned counsel for the revision petitioner, since the defendant has furnished the names of the executants and also the party, in whose name the document was executed and also the date of the document, the above particulars are very much sufficient for summoning the document.

9.No doubt, admittedly, the defendant has not filed any application, seeking permission of the Court to send the disputed document along with the document containing his admitted signatures to expert for opinion. As already pointed out, the defendant's earlier attempt to summon a particular document containing his signature was not successful as the Canara Bank has informed that the document sought to be produced is not available with them. As rightly contended by the learned counsel for the defendant, even after production of the document now sought for, the defendant can very well file an application seeking permission to send the document to expert and it is not a condition precedent to file such an application.

10.After receiving of the said document, the defendant without filing any such application, can very well request the Court to compare the signatures as well in the disputed document under Section 73 of Indian Evidence Act. Even if a report is received from the expert, that cannot be considered as a conclusive proof nor it is binding on the Court. The opinion of the expert or the opinion formed by the trial Judge himself under Section 73 of Indian Evidence Act after comparison, can only be used to corroborate the other substantive evidence available in the case and no finding can be arrived at, on the basis of those opinions.

11.Regarding the third ground, the suit promissory note is dated 12.12.2014 and the mortgage deed sought to be produced is dated 11.04.2000. The time gap between the two documents comes to three years and 8 months. The learned District Munsif has observed that the admitted document must be within three years before or



after disputed document. At this juncture, it is necessary to refer the Full Bench decision of the Andhra Pradesh High Court reported in **2016 (2) MWN (Civil) 1**, relied on by the learned counsel for the revision petitioner.

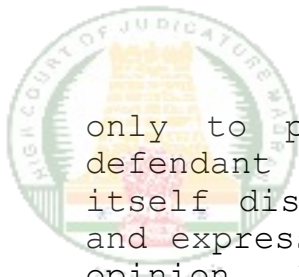
"Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu and others :

"36.We accordingly answer the reference as under :

It is essentially within the judicious discretion of the Court, depending on the individuals facts and circumstances of the case before it, to seek or not to seek Expert Opinion as before it, to seek or not to seek Expert Opinion as to the comparison of the disputed Handwriting / Signature with admitted Handwriting / Signature under Section of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed Handwriting/ Signature for comparison to an expert merely because the time gap between the admitted Handwriting/Signature and the disputed Handwriting/ Signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed Handwriting / Signatures with admitted Handwritings / Signatures, separated by a time lag of 2 to 3 years would be desirable so as to facilitate Expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the Expert concerned to voice his conclusion as to whether the disputed Handwriting / Signature and the admitted Handwriting / Signature are capable of comparison for a viable Expert Opinion. The view expressed by the Division bench in Janachaitanya House Ltd. Vs. Divya Financiers, 2002 (3) ALT 409 (DB), as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue".

12.Admittedly, neither any provision of law nor any rule mandates that the time gap between the admitted and the disputed documents must be within three years. As rightly observed by the Andhra Pradesh High Court, it is for the expert to decide as to whether the admitted and disputed documents are capable of comparison for a viable expert opinion. In the case on hand, as already pointed out, the time gap is about three years and 8 months and as such, it is only for the expert to decide about the capability of comparison.

13.Admittedly, when the suit was in part heard stage, the above application came to be filed. Neither the plaintiff nor the Court has whispered anywhere that the above application has been filed



only to protract the proceedings. As already pointed out, the defendant has specifically taken a stand in the written statement itself disputing the signatures found in the suit promissory note and expressed his intention to prove the same by getting an expert opinion. Despite the above specific stand of the defendant, admittedly, the plaintiff has not taken any steps to send the disputed document to the hand-writing expert, but on the other hand, the defendant has been taking necessary steps. Hence, the reasons or grounds assigned by the trial Court are not good in law and consequently the order of the trial Court dismissing the application is liable to be set aside.

14. In the result, the Civil Revision Petition is allowed and the impugned order passed in I.A No.1 of 2019 in OS.No.5 of 2017, dated 31.08.2020 by the learned District Munsif, Nilakkottai is set aside and the petition in I.A.No.1 of 2019 is allowed. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The District Munsif, Nilakkottai.

C.R.P (PD) (MD) .No.76 of 2021
08.06.2021

KB(02.07.2021) 5P 2C