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C.M.P.(MD)NO.5089 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.P. (MD)No.5089 of 2021 IN

A.S. (MD)No.184 of 2017

S.Seenivasan

... Petitioner/Appellant

Vs.

A.Ethiraj

... Respondent/Respondent

PRAYER: Petition filed under Section 45 of the Indian Evidence Act, to send the petitioner's alleged signature in Ex.A.1 promissory note to handwriting expert for comparing the same with the petitioner's admitted signature in the registered Power of Attorney document dated 29.04.2011 registered as Document No.664 of 2011 on the file of the Sub Registrar, Melapalayam and to direct the expert to file a detailed report pending disposal of the above appeal.

PRAYER IN AS (MD)No.184 OF 2017:

Appeal Suit filed under Section 96 of Civil Procedure Code, praying this Hon'ble Court against the Judgment and decree dated 14.02.2017 made in O.S.No.29 of 2015 on the file of the I Additional District Judge, Thoothukudi.

For Petitioner : Mr.D.Srinivasaraghavan
For Respondent : Mr.S.Kadarkarai

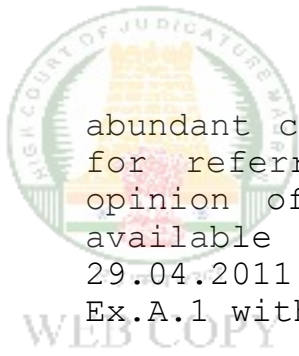
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O R D E R

The defendant in O.S.No.29 of 2015 on the file of the I Additional District Court, Thoothukudi, is the appellant in this second appeal.

2. The respondent herein Thiru.Ethiraj filed the said suit on the strength of Ex.A.1 promissory note. The defendant both in the reply notice as well as in the written statement had specifically denied having executed Ex.A.1 promissory note dated 28.10.2013. The Court below after a consideration of the evidence on record, decreed the suit as prayed for.

3. The learned Senior counsel appearing for the appellant/defendant pointed out that the learned trial Judge had erroneously cast the onus on the defendant. However, by way of



abundant caution, the defendant has now taken out this application for referring the signature in Ex.A.1 promissory note for the opinion of the handwriting expert. The defendant had also made available a copy of the registered power of attorney dated 29.04.2011 for effecting comparison of the disputed signature in Ex.A.1 with the admitted signature.

4. The learned counsel appearing for the respondent/plaintiff would point out that the plaintiff had examined himself as P.W.1 and also the attestors of the document. Thus, the plaintiff had discharged the onus cast on him and thereafter, the onus shifted to the defendant.

5. Be that as it may, when the signature in the promissory note is contested, it would be better, if the parties secure the opinion of the handwriting expert. If the parties have failed to take such a step, the Court must exercise its jurisdiction under Section 73 of the Indian Evidence Act, 1872 and render a finding. In this case, the opinion of the handwriting expert is not available. The learned trial Judge had also not compared the disputed signature with the admitted signatures of the defendant. According to the plaintiff, the signature of the defendant is found in Ex.A.3 acknowledgement card. Of course the defendant would dispute the same. Likewise the cheques issued by the defendant had also been marked as Ex.A.9. Therefore, I am of the view that this is a case in which a definite opinion must be rendered as regards the signature in Ex.A.1 after obtaining the opinion of the handwriting expert and after comparison of the other signatures of the defendant found in the record.

6. Since I do not have the benefit of such a clear opinion, I frame an additional issue as follows:-

"Whether the signature found in Ex.A.1 is that of the defendant Thiru.S.Seenivasan."

7. The first appeal is retained on the file of this Court. However, Registry is directed to despatch all the records immediately to the Court below. The appellant shall file a fresh application before the Court below for referring the signature in Ex.A.1 for the opinion of the handwriting expert. The Court below shall allow such an application that is to be filed by the appellant. The Court below shall mandate the handwriting expert to compare the disputed signature in Ex.A.1 with the admitted signature referred to in C.M.P.(MD)No.5089 of 2021. After getting opinion of the handwriting expert, the handwriting expert will be examined and cross examined by the parties. Thereafter, the Court below shall compare with the other signatures of the defendant found in the record and render a categorical finding and return it to this Court together with evidence and reasons therefor.

8. The entire exercise shall be completed within a period of

<https://hcservices.ecourts.gov.in/hcservices/>



eight months from the date of receipt of the records. This civil miscellaneous petition is disposed of accordingly.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

PMU

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 I Additional District Judge,
Thoothukudi.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2C)

Copy to:

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai

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21.06.2021

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