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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2021

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) Nos.2056 to 2058 of 2021

and

C.M.P. (MD) No.10983 of 2021

1.Thenmozhi

2.V.R.Balajikrishnan

... Petitioners in all C.R.Ps.,

vs.

1.P.Chellamuthu

2.Lakshmi @ Lakshayee

... Respondents in all C.R.Ps.,

COMMON PRAYER:- This Petitions are filed under Article 227 of the Constitution of India, to set aside the common fair and decreetal order dated 29.09.2021 passed in I.A.Nos.58, 60 and 59 of 2021 in O.S.No.28 of 2011 on the file of the learned Additional District and Sessions Judge, Palani, Dindigul District.

For Petitioners

in all C.R.Ps.,

: Mrs.Kanimozhi Mathi

For R1

in all C.R.Ps.,

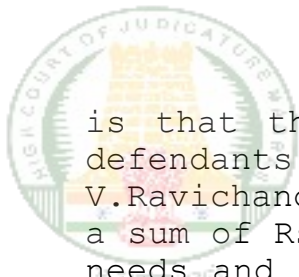
: Mr.B.Rajesh Saravanan

COMMON ORDER

The defendants 2 and 3, who are the revision petitioners in all the three Civil Revision Petitions, are challenging the common orders passed in I.A.Nos.58, 60 and 59 of 2021 in O.S.No.28 of 2011 dated 29.09.2021 by the learned Additional District and Sessions Judge, Palani, Dindigul District.

2.The brief facts are as follows:-

3.The suit O.S.No.28 of 2011 was filed by the 1st respondent herein for recovery of a sum of Rs.23,80,000/- with interest from the date of the plaint till the date of realization from and out of the assets of the deceased V.Ravichandran. The case of the plaintiff



is that the 1st defendant is the mother of V.Ravichandran and the defendants 2 and 3 are the wife and son respectively of V.Ravichandran. On 27.07.2009, the said V.Ravichandran had borrowed a sum of Rs.20,00,000/- from the plaintiff to meet his urgent family needs and on the same day itself, he had executed a promissory note agreeing to repay the same with interest at the rate of 1% per month to the plaintiff. The money was handed over on the very same day. Thereafter, the said V.Ravichandran had not taken any steps to repay the loan amount. Meanwhile, he had passed away on 03.09.2010. Despite repeated reminders, the defendants had not come forward to repay the said amount, which constrained the plaintiff to issue a legal notice dated 15.11.2010 on the defendants. The notice has been received by the defendants 1 and 2, but they have not chosen to send a reply or to make the payment. Therefore, the plaintiff had come forward with the above suit.

4.A written statement was also filed by the 2nd defendant denying the very execution of the promissory note and also contending that there was no necessity to borrow such a huge sum. The sum and substance of the contentions of the defendants was that the deceased V.Ravichandran had not executed the promissory note, had not borrowed the money and the signature found therein is a rank forgery. In the written statement itself, the defendants had stated that the signature had to be sent for an expert opinion.

5.The 1st defendant had also filed a written statement more or less on the same lines. She would also contend that after perusing the original documents pursuant to a memo, it is clearly evident that the signature found in the pro-note is not a signature of the deceased V.Ravichandran. The 3rd defendant thereafter had also filed a written statement on the very same lines. An additional written statement came to be filed by the 1st defendant *inter alia* contending that the promissory note was a forged one and contains interpolations.

6.Pending the proceeding, the plaintiff has filed the above interlocutory applications. In the affidavit filed in support of the said petitions, the 3rd defendant, who had filed an affidavit, would submit that he had been present on 04.02.2021 during the examination of the Officer of the Forensic Department, Madurai. His counsel had thereafter asked him to examine the certificate produced by the school and on examination, he found that there were discrepancies in the certificate as the certificate issued by the school and the certificate, which has been submitted to Saveetha Medical College, appear to contain different signatures not only of the deceased V.Ravichandran but also of the 3rd defendant. The 3rd defendant set out various difficulties that he has faced post the death of his father and how he had suffered at the hands of his paternal side relatives. He would therefore seek to have a direction issued to the Saveetha Medical College to produce the Transfer Certificate



submitted by him at the time of his admission to be compared with the disputed signature in the pro-note. Therefore, the petitioner had taken out these applications to reopen the defendants' side evidence, call for the original certificate and to receive the documents.

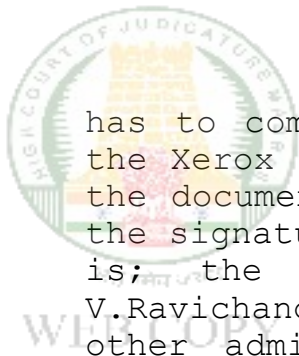
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7.The plaintiff had filed a detailed counter *interalia* contending that the 3rd defendant had appeared through counsel and had filed a detailed written statement, after he had perused the signature of his father in the suit promissory note. His mother, the 1st defendant had taken out an application in I.A.No.340 of 2011 to send the admitted and the disputed documents, containing the signature of the deceased V.Ravichandran to the expert opinion. The said application was ordered and the signatures were sent for an expert opinion and a report dated 28.11.2013 was received by the Court, which has been marked as Ex.C1. The expert has also been examined as D.W4. Thereafter, the 3rd defendant had applied for photo copies of both the admitted as well as the disputed document and sent it for a private handwriting expert's opinion, who had examined the same and has adduced evidence of D.W3.

8.The 3rd defendant would submit that it is not known as to how the third party could produce the Transfer Certificate of the 3rd defendant retained in the custody of the school, namely, Vidhya Vikas School and which has been produced before the Court. This document has been sent for an expert opinion and finds place in Ex.C1. Therefore, the plaintiff would submit that this application is not maintainable and an attempt to protract the proceeding.

9.The learned Judge after considering the rival submissions in detail and perusing the records had dismissed the said applications. The learned Judge had found that the suit is on promissory note and since the defendants have denied the signature, the burden is entirely on the plaintiff to prove the execution and passing of consideration. Once the plaintiff has discharged his duty, then it should be presumed that the defendants have executed the promissory note after receiving adequate consideration. The learned Judge had also observed that a similar application has been filed by the 2nd defendant in I.A.No.230 of 2012 to call for the very same Transfer Certificate from the Vidya Vikas Higher Secondary School. This report has been sent for expert opinion and a report has also been received, which has also been marked. The defendants have also cross-examined the handwriting expert in detail. That apart, the defendants have also had the signatures examined by a private expert and that report is also filed as a document. Therefore, the Court below had dismissed the applications. Challenging the same, the defendants 2 and 3 are before this Court.

10.Mrs.Kanimozhi Mathi, learned counsel appearing on behalf of the petitioners would vehemently contend that the handwriting expert



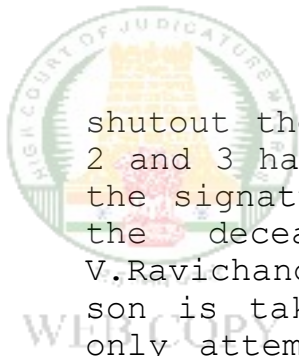
has to compare the disputed signature with the signature found in the Xerox copy of the documents. Therefore, there is a need to have the documents once again called for. Further, she would submit that the signature found in the document produced by the defendants, that is; the School Transfer Certificate and the signature of V.Ravichandran are totally different from the signature found in the other admitted documents, which have also been examined by the expert. She would submit that the signature in the promissory note is a suspected one, since the deceased V.Ravichandran was never in the habit of signing the document as V.Ravi and that he would only sign his full name.

11.The learned counsel would further submit that the School Transfer Certificate, which was submitted by the 3rd defendant to the Saveetha Medical College, contains a different signature from the school Transfer Certificate submitted for the opinion of the expert. This discrepancy in the very same document has to definitely be examined by a handwriting expert. Therefore, the trial Court has passed the order without application of mind.

12.*Per contra*, Mr.B.Rajesh Saravanan, learned counsel appearing for the 1st respondent would submit that the suit, which has been filed as early as in the year 2010, is yet to be disposed of. The defendants have filed one application after the other to stall the proceeding. He would submit that there is already two reports available before the Court in respect of the signature of the deceased V.Ravichandran. That apart, it is well open to the Court to itself examine the documents to arrive at a conclusion if the signatures are forged. He would submit that it is for the petitioners to prove that the signature in the promissory note belongs to the deceased V.Ravichandran, in the light of the denial of the signature of V.Ravichandran by the defendants. He would submit that the documents have not been produced by the defendants, but on the contrary have been provided by the 2nd defendant, the mother of the 3rd defendant. She had moved the application to have the signature contained in a School Transfer Certificate compared with the disputed signature. The Transfer Certificate was summoned from the 3rd respondent school, namely, Vidya Vikas School and a report has been submitted. The expert has also been examined and cross-examined. The defendants have also engaged their own expert to give an opinion and he has also given an opinion, which has also been marked as evidence. The present exercise is nothing but a repetition of the earlier petition, namely I.A.No.230 of 2012. The defendants by taking out applications one after the other have successfully managed to stall the proceedings for all these years.

13.Heard the learned counsels on either side.

14.The learned Judge has considered the issue on hand elaborately. The plaintiff cannot contend that the Courts have



shutout their evidence. On the contrary, the petitioners/defendants 2 and 3 have been given enough opportunities to prove the case that the signature found in the promissory note is not the signature of the deceased V.Ravichandran. The mother of the deceased V.Ravichandran has taken out an application and failed and now the son is taking out the very same application. The petitioners are only attempting to protract the proceedings. Therefore, I do not intend to interfere with the orders of the Court below.

15.In the result, these Civil Revision Petitions stand dismissed. The suit is at the stage of continuation of evidence on the defendants' side. Therefore, the learned District Judge and Sessions Judge, Palani, Dindigul District is directed to dispose of the suit O.S.No.28 of 2011 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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To

The Additional District and Sessions Judge,
Fast Track Court, Palani,
Dindigul District.

C.R.P. (MD) Nos.2056 to 2058 of 2021
21.12.2021

MGJ(08.02.2022) 5P 2C