



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.2276 of 2017

and

C.M.P. (MD) No.11048 of 2017

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Mariappan

.. Petitioner/Petitioner/
Defendant

-vs-

Kalamanimegalai

.. Respondent/Respondent/
Plaintiff

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair order and decreetal order dated 05.10.2017 made in I.A.No.523 of 2016 in O.S.No.93 of 2014 on the file of the Sub Court, Ambasamudram.

For Petitioner : Mr.S.P.Maharajan

For Respondent : Mr.D.Nallathambi

ORDER

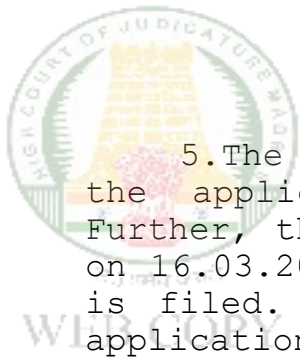
The defendant, whose application to send the suit promissory note, dated 29.04.2011, for the opinion of a handwriting expert has been dismissed by order, dated 05.10.2017 by the learned Subordinate Judge, Ambasamudram, is before this Court by way of this revision.

2.The facts in brief are as follows:-

2.1.The respondent herein had filed the suit in O.S.No.93 of 2014 against the petitioner for recovery of money due under the promissory note dated 29.04.2011.

3.The defence of the petitioner was that the promissory note was a rank forgery and not executed by him. Therefore, pending the suit, the petitioner/defendant had come forward with an application to get an order for sending the disputed signature in the suit promissory note dated 29.04.2011 for the opinion of an expert.

4.In the affidavit filed in support of the said application, the petitioner would contend that his defence is that the suit promissory note is a fabricated and created one. In these circumstances, it is essential that the signature be sent for a handwriting expert's opinion to be compared with the admitted signature of the petitioner in the document bearing No.469/2011, executed by the petitioner/defendant in favour of one Sahul Hameed, which is now under the custody of Tamil Nadu Mercantile Bank, Tirunelveli.



5.The respondent has filed a counter *inter alia* contending that the application was filed only to protract the proceedings. Further, the petitioner had inspected the suit pro-note as early as on 16.03.2015 and it was only 1½ years later, that this application is filed. Therefore, the plaintiff sought for dismissal of the application.

6.The learned Subordinate Judge, Ambasamudram, dismissed the application by her order dated 05.10.2017 by stating that the petitioner had not taken any steps to produce the copy of the document bearing No.496/2011. The learned Judge, however, held that contemporaneous documents have been filed in the application and therefore, the application cannot be entertained. On these two grounds, the application was dismissed.

7.Heard the learned counsel on both sides and perused the records.

8.The petitioner has, in his written statement itself, stated that his signature in the suit promissory note is a rank forgery. It is no doubt true that it is for the plaintiff to prove her case particularly when, the defendant, in no uncertain terms, had denied the receipt of the money or the execution of the promissory note. However, the plaintiff/respondent herein has not taken steps in this direction. Therefore, the defendant had come forward with the above application. This Court is of the considered view that no prejudice, whatsoever, is likely to be caused to the plaintiff, if the document is sent for an expert's opinion.

9.In view of the above, this Civil Revision Petition is allowed and the order dated 05.10.2017 passed in I.A.No.523 of 2016 in O.S.No.93 of 2014 is set aside. The defendant is directed to provide a contemporaneous public document so that the same could be sent along with the disputed signature for verification. The learned Subordinate Judge, Ambasamudram, shall forthwith take steps to send the document for an expert's opinion and within two months from the date of receipt of the report, the learned Judge, shall proceed to dispose of the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

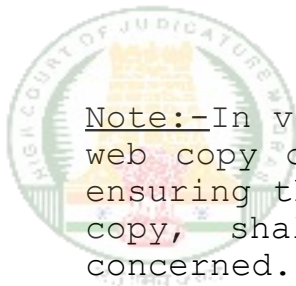
Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

abr



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.

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To
1.The Sub Judge,
Ambasamudram.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-39922[F] dated 22/12/2021)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-39929[F] dated 22/12/2021)
C.R.P.(PD) (MD) No.2276 of 2017

Dated: 21.12.2021

kk(CO)

GC(25.01.2022) 3P 6C