



CRP.No. 2988 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No. 2988 of 2017

and

CMP.No.14103 of 2017

Lakshmi Ammal

.. Petitioner

Versus

Deivasigamani (Died)

1. Dhanalakshmi

2. Janarthanan

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.263 of 2017 in O.S.No.142 of 2007 dated 20.06.2017 on the file of Additional Sub-ordinate Judge, Tiruppur.

For Petitioner : Mr.J. Franklin

For Respondents : No Appearance



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ORDER

This Civil Revision Petition has been filed to set aside the order in I.A.No.263 of 2017 in O.S.No.142 of 2007, dated 20.06.2017 on the file of Additional Subordinate Judge, Tiruppur.

2. The revision petitioner herein is the 2nd defendant and the respondents herein are the plaintiffs in the original suit proceedings.

3. The respondents/plaintiffs filed the suit in O.S.No.142 of 2007 before the Additional Subordinate Judge, Tiruppur, for recovery of money. Pending the suit proceedings, the revision petitioner/2nd defendant filed I.A.No.263 of 2017 under Order 26 Rule 10A of CPC., and under Section 45 of the Indian Evidence Act, for sending the disputed and admitted signatures of the deceased 1st defendant. After scrutinizing the relevant records, the trial Court dismissed the application by order dated 20.06.2017. Challenging the same, the present revision is filed.



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4. The learned counsel for the revision petitioner contended that the petitioner's husband, namely, Jeganathan who died, neither borrowed any loan from the first plaintiff, nor executed any promissory note contending that the signature of her husband contains only thumb impression. During his life time, he has denied his signature and therefore, after the demise of her husband, the defendants have to prove the same by obtaining forensic report, but the trial Court has failed to appreciate the facts, and simply dismissed the application. Therefore, he prays to set aside the impugned order dated 20.06.2017 passed by the trial Court.

5. None appeared on behalf of the respondents.

6. Heard the learned counsel for the revision petitioner and perused the materials available on records.

7. On a perusal of the records, it is seen that the suit was filed in O.S.No.142 of 2007 before the Additional Subordinate Judge, Tiruppur, for recovery of money. During the pendency of the suit proceedings,



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written statement was also filed and issues were framed before the trial Court. At this juncture, the revision petitioner/2nd defendant filed I.A.No.263 of 2017 under Order 26 Rule 10A of the Code of Civil Procedure and under Section 45 of the Indian Evidence Act, to compare the signature and thumb impression found in the promissory note along with Patta Pass Book. Already, a letter was issued by the Agricultural Department, in which her husband has signed and put up thumb impression, relied by the petitioner with regard to her husband's thumb impression. On a further perusal of the records, it is seen that both plaintiff and the defendant died and their legal heirs are contested the suit. The revision petitioner's husband along with first plaintiff, have also fraudulently created promissory note for getting loan amount and therefore, the signature of the deceased first defendant as well as to find his name in the promissory note the same was objected by the plaintiffs stating that it has to be adjudicated only through proper trial. Therefore, the petitioner/2nd defendant filed an application to drag on the proceedings and the said application is filed at a belated stage and the trial Court failed to note that the delay is not at all on the part of the petitioner, but only due to the demise of the 1st plaintiff as well as the 1st defendant,



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since LR applications were filed and subsequently amended plaints were filed for two times and only when the matter has come up for trial, the petitioner filed the application.

8. On a further perusal of the records, it reveals that at the time of filing of the suit, the 1st defendant-Jeganathan, was alive, but the signature in the promissory note is disputed. After the demise of her husband, the petitioner came to be impleaded in the suit proceedings and thereafter, the petitioner filed the documents and there is no delay on the part of the petitioner and she has assigned the reason but the application was dismissed is unjust and unfair. Hence, unless if chance is given to the revision petitioner/2nd defendant to prove her claim before the trial Court, her valuable right to defend the case would be defeated.

9. Considering the facts and circumstances of the case, the impugned order dated 20.06.2017 passed in I.A.No.263 of 2017 in O.S.No.142 of 2007 on the file of Additional Subordinate Judge, Tiruppur, is hereby set aside. The trial Court is directed to send the documents, namely, Promissory note said to be executed by the deceased first



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defendant and Patta Pass Book issued by the Agricultural Department to Tamil Nadu Forensic Science and Laboratory Department, for comparison by sending the disputed and admitted signatures in both documents. After getting the forensic report, which shall be obtained within 6 weeks, the trial Court is directed to dispose of the suit within a period of another three months thereafter.

10. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.10.2022

msm

Index : Yes/No

Speaking Order : Yes/No

To

1. The Additional Sub-ordinate Judge, Tiruppur.

2. The Section Officer, V.R.Section

High Court, Madras.



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T.V.THAMILSELVI, J.

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