



C.R.P.No.740 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.04.2023

Delivered On: 30.06.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.740 of 2020

and

C.M.P.No.3898 of 2020

Arumugam

... Petitioner

Vs.

Ramalingam

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order passed by the District Munsif Court, Sankarapuram, Villupuram District in I.A.No.856 of 2018 in O.S.No.201 of 2015 dated 03.12.2018 and to allow the Interlocutory Application as prayed for.

For Petitioner : Mr.V.Gunasekar

For Respondent :No appearance



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ORDER

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This Civil Revision Petition has been filed to set aside the fair and decretal order passed by the learned District Munsif, Sankarapuram, Villupuram in I.A.No.856 of 2018 in O.S.No.201 of 2015 dated 03.12.2018.

2. The brief facts, which are relevant to decide this Civil Revision Petition, are as follows:-

2.1.The Petitioner herein is Plaintiff in O.S.No.201 of 2015 on the file of the District Munsif Court, Sankarapuram. The suit was filed for recovery of money. The promissory note relied by the Plaintiff was marked in the evidence of the Plaintiff, but the attestors in the promissory note did not come forward to support the evidence of the Plaintiff. Therefore, he had filed a petition in I.A.No.856 of 2018 in O.S.No.201 of 2015 seeking to send the promissory note to obtain expert opinion regarding the signature on the promissory note. The learned District Munsif Judge had dismissed the petition after due enquiry stating that the petitioner had not mentioned the reasons for the attesting witnesses are not coming forward to adduce evidence. The Plaintiff had not taken steps to summon the attesting witnesses to enable the Court to appreciate the conduct of the attesting



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witnesses.

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2.2. In the light of the above circumstances, the plaintiff seeking expert opinion was rejected by the learned District Munsif, Sankarapuram. Aggrieved by the same, the Plaintiff had approached this Court by filing this Civil Revision Petition seeking to set aside the order passed by the learned District Munsif, Sankarapuram in I.A.No.856 of 2018 in O.S.No.201 of 2015 dated 03.12.2018.

3.The learned Counsel for the Revision Petitioner invited the attention of this Court to the averments in the plaint, the averments in the written statement, the affidavit filed by the Plaintiff in I.A.No.856 of 2018, the counter filed by the Defendant as Respondent therein and the order passed by the learned District Munsif, Sankarapuram in I.A.No.856 of 2018 in O.S.No.201 of 2015 dated 03.12.2018.

4. It is further submission of the learned Counsel for the Revision Petitioner that the Respondent herein, who is the Defendant before the Trial Court was served through his Counsel before the Trial Court.



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5. In spite of the notice served on the learned Counsel for the Respondent, neither the Respondent nor the Counsel for the Respondent appeared before this Court.

6. Point for consideration:

Whether the order passed by the learned District Munsif, Sankarapuram dismissing I.A.No.856 of 2018 in O.S.No.201 of 2015 dated 03.12.2018 is to be set aside?

7. The learned District Munsif had observed that without taking summons to the witnesses, the attesting witnesses in the promissory note, the Plaintiff had filed I.A.No.856 of 2018 on mere surmises and conjectures that the attesting witnesses refused to depose evidence in support of the Plaintiff. Therefore, the Plaintiff is left with no other option than to send the promissory note alleged to have been executed in favour of the Plaintiff by the Defendant for comparison of signature of the Defendant.

8. The observation of the learned District Munsif, Sankarapuram is



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found acceptable considering the fact that the summons had not been taken to the witnesses concerned if the witnesses failed to appear then the Plaintiff is entitled to seek the relief of sending the documents to the Forensic experts.

9. The Petitioner herein as Plaintiff, before ever seeking the forensic experts opinion, he is directed to issue summons to the attesting witnesses in the promissory note. After summons, if the witnesses failed to appear then, the plaintiff is well within his right to seek expert opinion. The learned District Munsif is directed to afford an opportunity to the plaintiff to examine the attesting witnesses by issuing of summons. If the attesting witnesses in the promissory note failed to appear and depose evidence in support of the Plaintiff, then the learned District Munsif shall pass appropriate orders. Thereby, directing the Defendants to furnish his documents containing his admitted signatures to enable the forensic expert to compare the signature and arrive at a conclusion regarding the signature found on the promissory note. Based on which, the suit had been filed by the Plaintiff.



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10. In the light of the above discussion, the order passed by the learned District Munsif, Sankarapuram, Villupuram dismissing the I.A.No.856 of 2018 in O.S.No.201 of 2015 dated 03.12.2018 is set aside.

11. The point for consideration is answered in favour of the Revision Petitioner and against the Respondent.

12. In the result, this Civil Revision Petition is allowed. The order passed by the learned District Munsif, Sankarapuram, Villupuram dismissing the I.A.No.856 of 2018 in O.S.No.201 of 2015 dated 03.12.2018 is set aside. The subject matter is remanded back to the learned District Munsif, Sankarapuram, Villupuram for passing fresh order. Consequently, connected miscellaneous petition is closed.

30.06.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
nr



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1. The District Munsif Court, Sankarapuram,
Villupuram District
2. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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Pre-delivery Order made in
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.06.2023