



C.R.P.(PD)No.2110 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2110 of 2019
and C.M.P.No.13644 of 2019

1.J.Anandayee

2.Rajeswari

3.Angammal

4.Anandavalli

5.Subashini

Sathivel (died)

6.Praveen Kumar

.. Petitioners

Vs.

Kasinathan (died)

2. K.Sundari

3. K.Jayaprakash

4. K.Sripriya

5. K.Gokulakrishnan

.. Respondents

(sole respondent died and the respondents

2 to 5 brought on record as the legal heirs

of the deceased sole respondent viz.

Kasinathan vide Court order dated 16.08.2023

made in C.M.P.Nos.18525, 18528 & 18529 of 2023



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in C.R.P.(PD)No.2110 of 2019 &
C.M.P.No.13644 of 2019)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 27.04.2019 made in I.A.No.162 of 2019 in O.S.No.150 of 2010 on the file of the Principal Sub Court, Villupuram.

For Petitioners : Mr.B.Sundarapandiyan

ORDER

The civil revision petitioners are the defendants and the 1st respondent is the plaintiff. The suit in O.S.No.150 of 2010 is filed for recovery of money based on a promissory note. According to the plaintiff, the father of the defendants 1, 3 to 7 & 9 to 11, one Pandurangan had borrowed a sum of Rs.5,00,000/- on 25.06.2007 from him. In pursuance thereof, he had executed a pro-note. The defendants, who are the legal representatives of the said Pandurangan, Pandurangan having died on 24.11.2007, were arrayed for the purpose of recovery of the assets of Pandurangan, which came into their hands. The defendants wanted to file a promissory note dated 22.07.2005 for the purpose of substantiating that there was only one transaction between the plaintiff and the said

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Pandurangan and that transaction was also ended in settlement of the entire dues.

2. According to the defendants, Pandurangan had borrowed a sum of Rs.5,00,000/- from Kasinathan on 22.07.2005, the former had repaid the entire amount to the latter and thereafter, the original promissory note was also returned to Pandurangan. The defendants would plead that the only transaction between Pandurangan and Kasinathan having entered was discharged and the present suit is not maintainable and they are not answerable to the claim. The defendants filed an application in I.A.No.162 of 2018 to mark the pro-note dated 22.07.2005 as a document in the suit. The said application was dismissed against which, the present revision has been presented.

3. Heard the learned counsel for the petitioners. I have carefully perused the records.

4. The claim of the plaintiff is that the suit promissory note is dated



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25.06.2007. He has to stand or fall on proving the promissory note dated 25.06.2007. The case of the defendants is that the pro-note dated 25.06.2007 is a forgery, which had been created by Kasinathan in order to grab the properties of Pandurangan. No where in the detailed written statement filed to the suit as the defendants pleaded about the previous transaction. Taking note of the said fact, the application to let in the pro-note as the document had been rejected.

5. It is settled position of law, where there was no pleading, the Court should not permit any evidence. In so far as the previous transaction between Pandurangan and Kasinathan is concerned, there has been absolutely no pleading. As stated above, the plea was pro-note is a forgery and in this regard, a Forensic Expert has also been examined. Having done that, the defendants cannot change track and plead that there were two promissory notes, one promissory note is genuine and the other promissory note is a fabrication. If the trial Court had permitted such a plea, it will amount to setting up a new defence in the suit that too



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in the stage of evidence. The trial Court has rightly dismissed the application, which does not require any interference in the revision.

6. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

7. The trial Court is requested to take up the matter on day-to-day basis and dispose of the same as the suit has been pending for the past 13 years. The said suit shall be disposed of and a report shall be submitted to this Court on or before 31.10.2023.

17.08.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

Note:Issue order copy on 18.08.2023

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V.LAKSHMINARAYANAN,J.

Kj

To

The Principal Subordinate Judge
Villupuram.

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and C.M.P.No.13644 of 2019

17.08.2023