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C.R.P.No.2645 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2023

C O R A M

THE HONOURABLE MRS.JUSTICE BHAVANI SUBBAROYAN

C.R.P.No.2645 of 2023
and C.M.P.No.16334 of 2023

Niranjani

... Petitioner

Vs.

P.Elango

... Respondent

PRAYER:-Civil Revision Petition filed under Article 227 of the Constitution of India against fair and decreetal order dated 27.01.2023 passed in I.A.No.4 of 2022 in O.S.No.6234 of 2019 by the XV Additional City Civil Court, Chennai.

For Petitioner : Mr. C.Deivasigamani

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 27.01.2023 made in I.A.No.4 of 22 in O.S.No.6234 of 2019, by the XV Additional City Civil Court, filed for getting opinion of the handwriting expert to compare the signature found in Ex.P1 and the admitted signature.

2. The petitioner who is the second defendant in the suit, which was filed for recovery for recovery of money by the petitioner. The petitioner's mother alleged to have borrowed a sum of Rs.5,00,000/- and executed a



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mortgage deed and the petitioner herein has signed as the attesor to the mortgage deed dated 26.09.2012. The petitioners claim is that she had not appeared before the Registrar and not signed the same as an attesor as her father-in-law died, she has gone out for attending a funeral ceremony, the petitioner's signature has been forged. To prove that the said signature of the petitioner found in the Ex.A1 with the admitted signature.

3. A counter was filed by the respondent/plaintiff who had stated that the present application has been filed to state that she has not signed the same as a witness which was executed by her mother. The property which was purchased by one Jeyalakshmi and that the property stood in her name as on the date of execution of Mortgage Deed for availing the loan from the plaintiff. Therefore, the averments as regards the 2nd defendant had not signed the document is not relevant to the facts in issue and only to divert the core issue she had filed the present petition. There is no valid reason and the same has to be dismissed.

4. The trial Court on considering the said plea of both the sides have come to an conclusion that the main suit is filed for recovery of money where the petitioner's mother has obtained the loan of a sum of



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Rs.5,00,000/-from the respondent/ plaintiff and failed to pay and she is the second attesting witness is liable to pay the same with interest. The second defendant's allegation is that it is a forged signature and prayed that Ex.A.1 be sent for opinion of handwriting expert. They failed to produce any such document which is an admitted document alleged to have been signed at the time of the contemporary period of execution of the said mortgage deed. Though it was brought to the knowledge of the petitioner by plaintiff counsel by way of argument and also by the trial Court, the petitioner/defendant has not produced any such document containing the admitted signatures of the petitioner. Hence, the Court was unable to allow this petition as it is handicapped. Further, the main suit was filed in the year 2019, whereas, the said Application is filed in the year 2022, after a period of three years and hence, the Application was dismissed. Aggrieved by the order passed by the trial Court the petitioner has come forward with the present Civil Revision Petition.

5. In the present Civil Revision Petition, the counsel for the petitioner has raised a specific ground that the order passed by the trial Court is against law and facts. After the plaintiff has been examined, the petitioner has filed to produce certain documents, which has been dismissed by the trial Court



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and the C.R.P. has been filed before this Court and the same was allowed. The petitioner had once again filed an application to send the documents for opinion of the handwriting expert and the same has been dismissed on the ground that the petitioner had failed to produce any contemporary document. Neither the respondent nor in the Court there is a contemporary document was produced which was signed by the petitioner. The prayer in the petition is to compare signature in the alleged document with the admitted signature of the executor. Hence the observation of the trial Court is incorrect and invalid. It has to be seen that for sending a document for expert opinion, there should be a document for comparing the admitted signature of the said petitioner as she is not admitting the signature in the Ex.A1. The said document is executed in the year 2001 and the contemporary period document ought to have been filed by the petitioner for comparison by the Court and if it is satisfied, the same can be sent for expert's opinion.

6. It is a case, in the absence of any such document filed by the petitioner, the same cannot be considered and the trial Court and hence the trial Court has rightly dismissed the application. Now, the learned counsel for the petitioner prays that the said document can be compared with the admitted signature in the written statement, but, the same cannot be done since the



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Mortgage Deed was executed in the year 2012 and the written statement was filed in the year 2023 after 10 years, the document cannot be compared and the petitioner ought to have produced the appropriate document at the time of the relevant period and now the same cannot be done as it would protract the proceedings. The petitioner has to prove her case only with appropriate materials and the learned counsel cannot state that the Court did not direct him to produce the document. It is the petitioner who prays that the certain document is a forged document, therefore, it is for the petitioner to prove that the signature in the alleged document was not signed by her by way of producing admitted signatures for comparing the same. In the absence of any such documents this Court is not inclined to set aside the order passed by the trial Court and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No
Speaking Order/Non Speaking Order
gba

To

1. The XV Additional City Civil Court, Chennai.



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