



CRP (MD) No.123 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	05.07.2023
Pronounced on	18.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP(MD) No.123 of 2023
and
CMP(MD)No.597 of 2023

Alagarakkal

... Petitioner

Vs.

Kandhavel

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and executable order dated 10.01.2022 passed in the application in I.A.No.1 of 2022 in O.S.No.100 of 2019 on the file of the Subordinate Court, Mudukulathur.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.D.Senthil



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ORDER

This civil revision petition is preferred as against the order passed in I.A.No.1 of 2022 in O.S.No.100 of 2019, dated 10.11.2022, by the learned Subordinate Judge, Mudukulathur.

2. According to the revision petitioner, the suit in O.S.No.100 of 2019 on the file of the Sub Court, Mudukulathur, was preferred by the respondent/plaintiff for the recovery of sum of Rs.4,61,867/- with interest at the rate of 12% per annum from the date of plaint till the date of realisation and for permanent injunction restraining the respondent/plaintiff from alienating and encumbering the suit property. During the pendency of the suit, the petitioner/first defendant filed an application in I.A.No.1 of 2022 under Section 45, 73 of Indian Evidence Act and Order 26 Rule 10-A of Code of Civil Procedure to send Ex.A1-Promissory Note, dated 01.08.2018, for comparing the signatures of the petitioner/first defendant in Ex.A2-sale deed, dated 22.07.2011 and also the signatures found in vakalat, written statement filed by the first defendant by Handwriting Expert. The contention of the



petitioner/first defendant is that the suit promissory note is a forged one.

Therefore, opinion of the Handwriting Expert is necessary to find out the genuineness of the promissory notice filed in the above suit. The same was resisted by the respondent/plaintiff by stating that the above attempt of the petitioner/first defendant is only to protract the proceedings and the case is now posted for cross examination of the plaintiff by the first defendant. The trial Court after considering the materials on record and the arguments advanced by the respective counsels, dismissed the petition by stating that the sale deed dated 22.07.2011 is not a contemporaneous document and only when the contemporaneous document is submitted, the same shall be sent for comparing the Handwriting Expert for arriving at a conclusion. Therefore, there is no necessity for comparison. Assailing the said order, the present civil revision petition is filed.

3. The learned counsel for the petitioner would submit that the Court below failed to exercise the jurisdiction conferred on it without application of mind and there is flagrant violation of the principles of law, which resulted in failure of justice to the petitioner. He would further submit that the Court



below failed to take note of the fact that the petitioner had produced the registered sale deed dated 22.07.2011 consisting of her signature. Though the opinion of the expert will not be a conclusive proof, it will be a piece of evidence to have a fair conclusion in resolving the dispute between the parties. He would further submit that when there is a specific plea in the written statement filed by the first defendant that the suit promissory note is a fabricated document, the Court below ought to have allowed her application for expert opinion. He would further submit that neither any provision of law nor any rule mandates that the time gap between the admitted and the disputed documents must be within three years. It is for the expert to decide as to whether the admitted and disputed documents are capable of comparison for a viable expert opinion.

4. The learned counsel for the petitioner would further submit that it is essential, within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian



Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. To support his contentions, he has relied upon the decisions reported in **2022(2) CTC 82 and (2016) 2 CTC 481 (FB)**.

5. On the other hand, the learned counsel appearing for the respondent/plaintiff would submit that the above petition for comparison of signature was filed by the petitioner after issues were framed and the case



was posted for cross-examination of the respondent/plaintiff by the petitioner/defendant. The petitioner belatedly filed the above petition only to delay the proceedings and therefore, the Court below has rightly dismissed the above application considering the facts on record. He would further contend that the admitted document as well as the disputed document must belong to contemporaneous period. If the documents are not of the contemporaneous period, then it is not advisable to send the documents to the expert for his opinion for comparison of signatures. To support his contention, he has relied upon the decision reported in **(2009) 5 LW 271**.

6. Heard on both sides and records perused.

7. The revision petitioner is the defendant and the respondent/plaintiff has laid a suit in O.S.No.100 of 2019, on the file of the Subordinate Court, Mudukulathur, to recover the amount with interest due on a promissory note dated 01.08.2018 alleged to have been executed by the revision petitioner in favour of the respondent. The defendant has taken a specific defence in the written statement that she has not borrowed any amount from the plaintiff at



any point of time nor executed any promissory note in his favour and that the signature found in the suit promissory note are not that of her signatures.

Hence, she preferred an application before the Court below for sending the sale deed dated 27.07.2011 along with disputed promissory note to the expert for comparison and report. However, the trial Court had erroneously dismissed the application on the ground that the admitted document is not a contemporaneous document. Aggrieved by this, she preferred the present civil revision petition.

8. Placing reliance on the principles laid down in the referred cases by the revision petitioner, admittedly, neither any provision of law nor any rule mandates that the time gap between the admitted and the disputed documents must be within three years. It is for the Court to decide as to whether the admitted and disputed documents are capable of comparison for a viable expert opinion. Since the defendant has taken a specific plea in the written statement itself disputing the suit pro-note as forged document and expressed her intention to prove the same by getting an expert opinion, the Court ought to have considered the application filed by the petitioner herein to defend her



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case. Hence, the reasons assigned by the trial Court that the admitted document is not a contemporaneous document, cannot be accepted and not good in law and consequently, the order of the trial Court dismissing the application, is liable to be set aside.

9. In the result, this Civil Revision Petition is allowed and the impugned order dated 10.11.2022 passed in I.A.No.01 of 2022 in O.S.No.100 of 2019, by the learned Subordinate Judge, Mudukulathur, is set aside and the said petition is allowed. Considering the fact that the suit is of the year 2019, the said exercise to compare the signature shall be done within a period of one month from the date of receipt of a copy of this order. The learned Subordinate Judge, Mudukulathur, is also directed to dispose of the suit in O.S.No.100 of 2019 within a period of four months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
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To
The Subordinate Judge,
Mudukulathur.



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K.GOVINDARAJAN THILAKAVADI

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order made in
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