



C.R.P(MD)No.840 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.02.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.840 of 2017

and

C.M.P(MD)No.3746 of 2017

S.Thangamudi

... Petitioner/1st Petitioner/
1st Petitioner/1st Defendant

Vs.

1.Harib Balakrishnan

... 1st Respondent/Respondent/
Respondent/Plaintiff

2.T.Karuppasamy

... 2nd Respondent/2nd Petitioner/
2nd Petitioner/2nd Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.258 of 2016 in I.A.No.189 of 2016 in O.S.No.51 of 2015 on the file of II Additional District Judge, Tuticorin dated 10.02.2017.

For Petitioner : Mr.M.P.Senthil

For R-1 : Mr.KA.Ramakrishnan

For R-2 : No Appearance



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ORDER

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The present revision petition has been filed by the 1st defendant in a suit for recovery of money based upon a pro-note.

2. According to the 1st defendant, his signature has been forged in the pro-note. The 2nd defendant's signature has been obtained in a blank pro-note. The said averments have been specifically made in Paragraph Nos.6 and 8 of the written statement. When the suit was posted for arguments, the 1st defendant had filed I.A.No.189 of 2016 to compare the signature of the 1st defendant in the suit pro-note along with the signature of the 1st defendant in the acknowledgement card for the suit notice, vakalat and the written statement. When the said application was pending, the 1st defendant was advised that a signature in the suit pro-note cannot be compared with a document which has come into force after the suit has been filed.

3. Therefore, the 1st defendant had filed I.A.No.258 of 2016 for appointment of an Advocate Commissioner to take the original suit pro-note to an expert and to compare the suit pro-note with certain documents said to have been executed by the 1st defendant in favour of a



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private finance company in the year 2014. I.A.No.258 of 2016 was dismissed by the trial Court on the ground that the application has been filed belatedly and as an after thought when the suit is posted for arguments. Challenging the same, the present revision petition has been filed.

4. The learned counsel for the petitioner vehemently contended that when he has specifically disputed the signature in the suit pro-note, at a later point of time, he may be called upon to prove the fact that it is not his signature. In order to dis-prove the case of the plaintiff, necessarily the suit pro-note has to be compared with some signature in the admitted documents of the 1st defendant.

5. Per contra, the learned counsel appearing for the plaintiff/respondent had contended that the application has been filed belatedly and hence, the order of the trial Court may be sustained.

6. I have carefully considered the submissions made on either side.



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7. A careful perusal of the plaint indicates that it has been filed for recovery of money based upon a pro-note said to have been signed by the defendants 1 and 2. It is the specific case of the defendants in the written statement that the 1st defendant's signature has been forged and the 2nd defendant's signature has been obtained in a blank pro-note. Therefore, it is clear that the signature of the 1st defendant in the suit pro-note and the execution of the suit pro-note by the 1st defendant have been specifically disputed in the written statement. In view of Section 101 of the Indian Evidence Act, the entire burden is upon the plaintiff to establish that the 1st defendant has also executed a suit pro-note along with the 2nd defendant. When the entire burden is upon the plaintiff, unnecessarily the defendants have filed I.A.No.189 of 2016 in O.S.No.51 of 2015. It is for the plaintiff to establish that the signature of the 1st defendant in the suit pro-note is that of the 1st defendant and the 1st defendant has executed this suit pro-note along with the 2nd defendant.

8. In view of the above said facts, I do not find any illegality or infirmity in the order passed by the trial Court. This Court in a judgment reported in **2006 (4) CTC 850 (N.Chinnasamy Vs. P.S.Swaminathan)** in Paragraph No.32 (12) has held as follows:



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“(12) When the defendant denies the signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps for examination of the disputed signature by sending the document to a handwriting expert.”

In view of the above said judgment, the application filed by the defendants is unnecessary and the same stands dismissed.

9. This Civil Revision Petition stands disposed of. No costs.
Consequently, connected Civil Miscellaneous Petition is closed.

23.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The II Additional District Court,
Tuticorin.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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