



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

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Friday, the Twenty Second day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice RMT.TEEKAA RAMAN

AND

The Hon`ble Mr.Justice P.B. BALAJI

CMP(MD). No.15897 of 2023

in

AS(MD) No.118/2023

Ganesan

... Petitioner/ Appellant

Vs

1 Venkatraman,

2 Ganesan

... Respondents/ Respondents

Prayer in CMP(MD). No.15897 of 2023 :-

This Civil Miscellaneous petition is filed under Order 26, Rule 10A of C.P.C., R/W Section 151 of C.P.C., & 45 of Evidence Act, to send Ex.A1, the pro-note dated 20.07.2011 as well as Ex.B1, the sale agreement dated 31.08.2010 in order to compare the signature in Ex.A1 along with the admitted signature found in Ex.B1 both marked in O.S.No.14 of 2014 on the file of Learned Additional District Judge, Dindigul with proper cover and seal by this Honourable Court to the office of The Deputy Director, Regional Forensic Science, Laboratory, Collector Office Road, Madurai through an advocate commissioner to be appointed by this Honourable Court.

Prayer in AS(MD) No.118/2023:-

This Appeal Suit filed under section 96 of Civil Procedure Code to set aside the judgment and decree dated 12.04.2023 passed in O.S. No. 14 of 2014 on the file of Learned Additional District Court, Dindigul.



ORDER:-

This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M.P.Senthil, Advocate for the Petitioner and of Mr.K.C.Ramalingam, Advocate for the respondents, this Court made the following order:

Reserved on : 27.11.2023

Delivered on: 22.12.2023

(Order of the Court was made by P.B.BALAJI,J.)

The above miscellaneous petition has been taken out by the petitioner / appellant, who is the plaintiff in O.S.No.14 of 2014. The suit has been filed based on Ex.A1- promissory note, dated 20.07.2011. After trial, the trial Court has dismissed the suit, as against which the present appeal has been preferred by the plaintiff. Pending the said Appeal, the appellant has taken out the present application on the ground that the trial Court has dismissed the suit on a total misconception of facts and the trial Court erred in shifting the burden of proof on the appellant for establishing that the signature contained in Ex.A1- promissory note was that of the respondents. According to the petitioner / appellant/ plaintiff , apart from examining himself, he has also examined P.W.2, one Mr.Samuel and therefore, the initial onus had been discharged and the Court should have called upon the defendants, namely, the respondents herein, to prove their case that the signatures found in the promissory note were not that of the respondents / defendants.



2. The learned counsel for the petitioner / appellant would place reliance on the decision of a Single Judge of this Court in *N.Chinnasamy V. P.S.Swaminathan* reported in **2006-4-CTC-850**, wherein, this Court held that there is no bar for the First Appellate Court to send documents to get expert opinion. The learned counsel for the petitioner / appellant would also place reliance on the decision of a Single Judge of this Court in *K.R.Chinnasamy V. K.R.Chinnsamy* reported in **2011-2-MWN(Civil)-637**, wherein, this Court held that if the opinion of handwriting expert is obtained, it would help the Court to compare the disputed signature with the admitted signature and therefore an application in this regard could be entertained, even at the appellate stage.

3. The learned counsel for the petitioner / appellant would further place reliance on the decision of a Single Judge of this Court in *D.Janaki V. S.Jayalakshmi* reported in **2012-2-CTC-410**, wherein, this Court held that the primary duty of the Court should be to decide as to whether the disputed signature and the admitted signature are that of one and the same person and that allowing the application seeking comparison at the stage of appellate stage, would not amount to letting in additional evidence under of Order XLI Rule 27 C.P.C. The learned counsel for the petitioner / appellant would therefore pray that the request for comparison be entertained.



4. Per contra, the learned counsel for the respondents / defendants would submit that the trial Court had rightly found that the petitioner did not take any steps to compare the signatures in Ex.A1- promissory note which were disputed by the respondents / defendants and the petitioner / appellant cannot be permitted to seek to undertake this exercise after suffering a decree of dismissal of the suit for recovery of money.

5. We have heard Mr.M.P.Senthil, learned counsel for the petitioner and Mr.K.C.Ramalingam, learned counsel for the respondents. We have paid our anxious and careful consideration to the rival submissions advanced by the parties.

6. Admittedly, the suit has been laid on the basis of Ex.A1- promissory note for recovery of money. The defendants have filed a written statement denying the receipt of the alleged money mentioned in the said promissory note and also the signatures of the defendants as found in the said promissory note. In view of the such plea being taken by the defendants, the plaintiff has diligently examined the witness to the said suit promissory note as P.W.2. This Court, in the decisions relied on by the learned counsel for the petitioner / appellant, placing reliance on earlier decisions of this Court, has held that an application seeking comparison at the appellate stage was maintainable and in order. In the present case, we do not find



any lack of *bonafides* on the part of the petitioner / appellant in taking out the said application. No prejudice would be caused to the respondents / defendants, who have categorically taken a stand that the signature in Ex.A1 – promissory note was not theirs. Therefore, we incline to accept the request of the petitioner / appellant and allow the present application.

7. In fine, C.M.P.(MD)No.15897 of 2023 is allowed and Mr.Venkatesan (Cell No.9842020111) is appointed as an Advocate Commissioner to take Ex.A1 – promissory note dated 20.07.2011 (disputed signature) along with the sale agreement in Ex.B1 dated 31.08.2010 (admitted signature), in a sealed cover and hand over the same to the Deputy Director of Regional Forensic Science Laboratory, Collector's Office, Madurai / Director, Regional Forensic Science Laboratory, Chennai and obtain a report of comparison of the said disputed signature in Ex.A1 with the admitted signature in Ex.B1 and submit the report in a sealed cover within a period of four weeks from today. Remuneration of the Advocate Commissioner is fixed at Rs.25,000/-, which shall be payable by the petitioner / appellant.

8. The Registry is directed to handover the original of Ex.A1 and Ex.B1 to

the Advocate Commissioner on obtaining suitable and necessary endorsement and

<https://www.mhc.tn.gov.in/judis>



shall also ensure that on the Forensic Report being filed, the originals of Ex.A1 and Ex.B1 are also restored to the bundle.

// True Copy //

Sd/-
Assistant Registrar(CO)

/01/2024
Sub Assistant Registrar
(CS - I/II/III/IV)

TO

- 1.Mr.Venkatesan,
Advocate, Enrollment No.2085/2008,
No.36, Law Chamber,
Madurai Bench of Madras High Court,
Madurai.
- 2.The Director,
Regional Forensic Science Lab,
Chennai.
- 3.The Deputy Director of Regional Forensic Science Lab,
Collector's Office,
Madurai.

Copy to
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(to hand over the original of EX.A1 and
EX.B1 to the Advocate Commissioner)



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ORDER DATED : 22/12/2023

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ORDER

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CMP(MD). No.15897 of 2023

in

AS(MD) No.118/2023

Giving direction and etc.
as stated within.

MK/02.01.2024 7P 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023