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CRP No. 2148 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-12-2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No.2148 of 2021

and

C.M.P. No. 16261 of 2021

C.Chinnathambi

.. Petitioner

Versus

Pushpa

.. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 15.07.2021 passed in I.A.No.2 of 2019 in A.S.No.24 of 2019 by the learned Additional District and Sessions Judge, Dharmapuri and allow the said I.A. filed by the Petitioner.

For Petitioner	:	Mr. A. Arun Anbumani
For Respondent	:	Mr. V. Ayyadurai, Senior Counsel, for Mr.V.B.Perumal Raj

ORDER

This Civil Revision Petition has been filed to set aside the order dated 15.07.2021 passed in I.A. No. 2 of 2019 in A.S. No. 24 of 2019 on the file of Additional District and Sessions Judge, Dharmapuri.



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2. The Respondent is the Plaintiff, who had instituted the suit in O.S. No. 131 of 2014 praying to direct the Defendant/Revision Petitioner herein to execute the sale deed on receipt of the sum of Rs.1,70,000/- from her as per the covenants contained in the re-conveyance agreement dated 08.03.2010 and for a consequential permanent injunction restraining the Revision Petitioner/Defendant from in any manner alienating the suit schedule properties to third parties and for costs.

3. According to the Plaintiff, for the purpose of meeting the educational expenses of her sons, she had pledged the suit schedule property in favour of the Revision Petitioner-Defendant on 08.03.2010 and availed a loan of Rs.1,70,000/-. In this context, a re-conveyance agreement dated 08.03.2010 came to be executed between the Plaintiff and the Defendant wherein it was specifically agreed that in lieu of interest, the Defendant can take possession of the suit schedule property and utilise the proceeds thereof, however, as and when the Plaintiff repays the loan amount of Rs.1,70,000/- the Defendant has to execute a re-conveyance deed in her favour, thereby delivering the suit schedule property without any encumbrance. Accordingly, on the same day namely 08.03.2010, a sale deed was executed by the Plaintiff in favour of the



Defendant on the specific understanding that as and when the loan amount is repaid within a period of five years, the Defendant has to execute a re-conveyance deed. However, when the Plaintiff was ready to repay the loan amount, the Defendant refused to execute the re-conveyance deed. Therefore, the Plaintiff issued a notice dated 06.10.2014 calling upon the Defendant to re-convey the suit schedule property to her upon receiving the loan amount. As the Defendant did not send any reply, the Plaintiff has instituted the suit.

4. On notice, the Defendant-Revision Petitioner filed a written statement denying the alleged re-conveyance agreement. According to the Defendant, the Plaintiff has created a sham and nominal re-conveyance agreement. The Defendant has not given any assurance to re-convey the suit schedule property to the Plaintiff. Once a sale deed had been duly executed in favour of the Defendant, the question of re-conveyance will not arise. Accordingly, the Defendant prayed for dismissal of the suit.

5. Before the trial court, the Plaintiff examined herself as P.W-1 along with two other witnesses as P.W-2 and P.W-3 and marked Ex.A-1 to Ex.A-4. On behalf of the Defendant, he examined himself as D.W-1 but did not mark any document. The trial court, upon considering the oral and



documentary evidence, decreed the suit on 08.08.2019. As against the same, the Revision Petitioner-Defendant has preferred an appeal in A.S. No. 24 of 2019. Pending appeal, the Revision Petitioner-Defendant has taken out the instant application in I.A. No. 2 of 2019 in A.S. No. 24 of 2019 to send the re-conveyance agreement under Ex.A-1 to forensic experts to compare his signature in Ex.A-1 along with his other admitted signature and to render their opinion. The appellate court, by the order dated 15.07.2021, dismissed the said application. Challenging the order dated 15.07.2021, the present Civil Revision Petition is filed.

6. The learned Counsel for the Revision Petitioner submitted that the Petition in I.A. No. 2 of 2019 in A.S. No. 24 of 2019 has been filed to compare the signatures found on the alleged re-conveyance agreement relied on by the Plaintiff and to send the said document to the handwriting expert for their opinion. According to the learned counsel for the Revision Petitioner, the appellate Court, without affording such an opportunity to the Revision Petitioner dismissed the said application. It is his contention that the Plaintiff solely relied on the alleged re-conveyance agreement to put forth her case, but it was categorically denied by the Defendant in his written statement. The Revision Petitioner-Defendant has not come forward with any new case or



intends to drag on the appeal proceedings. The appellate Judge, without considering the above, had dismissed the application filed under Section 45 of The Indian Evidence Act. In support of his contention, he placed reliance on the ruling of the Hon'ble Supreme Court in the case of ***Thiruvengadam Pillai Vs. Navaneethammal and Another*** reported in (2008) 4 SCC 530. It is stated that on the basis of the said Judgment, this Court passed an order in the case of ***K.R. Chinnasamy Vs. K.R. Chinnasamy*** reported in 2011 (2) MWN (Civil) 637 wherein it was categorically held that application seeking to examine the disputed handwriting at the appellate stage is permissible as it would help the Court to compare the disputed signature with the admitted signature. By placing reliance on the aforesaid decision, the learned Counsel for the Revision Petitioner seeks to set aside the order passed by the learned Additional District and Sessions Judge, Dharmapuri and to allow the present Civil Revision Petition.

7. Mr. V. Ayyadurai, learned Senior Counsel appearing for the Respondent submitted that the Revision Petitioner/Defendant is none other than the son of paternal uncle of the Respondent/Plaintiff. The sale deed was executed on 08.03.2010 with full understanding to treat the sale as the one made in lieu of payment of interest for the loan amount received by the



Plaintiff and as and when the amount is repaid, to re-convey the property to her. It is further submitted that taking advantage of the absolute sale deed executed by the Respondent/Plaintiff the Revision Petitioner/Defendant seeks to usurp the property which is worth more than Rs.50,00,000/-. The learned Senior Counsel appearing for the Respondent submitted that when the Defendant denied the signature contained in the re-conveyance agreement, in his written statement, he ought to have taken steps at the earliest point of time before the trial court to compare the signature in the re-conveyance agreement. But the Revision Petitioner seeks for comparison of the signature in Ex.A-1 with his admitted signature at the appellate stage, after a decree was granted in favour of the Respondent. Even for the notice sent by the Respondent, before instituting the suit, the Revision Petitioner had not issued any reply notice. The Revision Petitioner, as Defendant, had not marked any document on his side during trial. The learned trial Judge, therefore, in paragraph 7 of the judgment, while answering the issue No.1, had stated that the Defendant having disputed Ex.A-1 it is for him to disprove his signature in Ex.A-1. Thus, having suffered a decree, the Revision Petitioner has now filed the instant application only to drag on the proceedings. In any event, at the appellate stage, the petition filed by the Revision Petitioner-Defendant is not maintainable in law for two reasons – (i) the trial Court had decided the issues



involved in the suit in favour of the Plaintiff and only thereafter, the Revision Petitioner had woken up from his deep slumber to file the instant petition (ii) the conduct of the Defendant/Revision Petitioner in seeking to compare the signature at the appellate stage is only to harass the Respondent-Plaintiff and to prevent her from enjoying the fruits of the decree, which she had obtained on merits.

8. The learned Senior counsel further submitted that the Revision Petitioner-Defendant filed the Petition in I.A.No.2 of 2019 in A.S. 24 of 2019 under Section 45 of the Indian Evidence Act without any justification. The learned trial Judge had exhaustively considered the evidence and found that the Revision Petitioner had not even issued a reply to the Plaintiff to the pre-suit notice. However, in the written statement, it was stated as though the Revision Petitioner-Defendant confronted the Respondent-Plaintiff upon receipt of the legal notice, but she has not given any satisfactory reply. If that be so, the Revision Petitioner ought to have issued a reply notice denying the averments contained therein. Having failed to do so, the Revision Petitioner is legally estopped from filing the present petition.

9. The learned Senior counsel also submitted that the Defendant during his cross-examination has given contradictory statement with regard to



non-issuing of reply notice. On the other hand, the Respondent-Plaintiff through oral evidence by herself and through P.W-2 and P.W-3 has proved the case and obtained a decree. In any event, the Defendant-Revision Petitioner did not deny the receipt of legal notice, while so, the conduct of the Defendant to compare the signature found in Ex.A-1 with his admitted signature, at the stage of appeal cannot be countenanced. The learned Trial Judge on his own compared the signature of the Defendant in the written statement with Ex.A-1 and decreed the suit as prayed for. Since the Defendant failed to prove his defence, the learned Appellate Judge is right in dismissing the application in I.A. No. 2 of 2019 in A.S. No. 24 of 2019 which is well reasoned order and it does not warrant interference. The learned Senior counsel therefore prayed for dismissal of the Civil Revision Petition.

10. Heard the learned counsel for the petitioner and the learned Senior counsel for the Respondent. The records made available, including the judgment of the trial court as well as the order of the appellate court in I.A. No. 2 of 2019 were perused.

Point for consideration:

Whether the order passed by the learned Appellate Judge dismissing I.A.No.2 of 2019 in A.S.No.24 of 2019, dated 15.07.2021 is to be set aside as perverse?



11. The suit was filed by the Respondent-Plaintiff to direct the Defendant/Revision Petitioner herein to execute the re-conveyance deed upon receipt of the sum of Rs.1,70,000/- from her as per the covenants contained in the re-conveyance agreement dated 08.03.2010 and for a consequential permanent injunction restraining the Revision Petitioner/Defendant from in any manner alienating the suit schedule property to third parties and for costs. On notice, the Revision Petitioner-Defendant filed his written statement, in which he referred to the alleged re-conveyance agreement as false and fabricated. If that be so, the Revision Petitioner-Defendant ought to have taken steps to send the disputed signature for expert opinion to prove that he had not signed the said document. In the present case, the Revision Petitioner-Defendant, except filing the written statement, did nothing. Even before institution of the suit, a notice was sent for which the Revision Petitioner-Defendant did not bother to send a reply notice. It was an earliest opportunity for the Revision Petitioner-Defendant to record his objection for the averments contained in the notice, which he had missed to avail. The explanation given by the Defendant/Revision Petitioner in his written statement for not issuing a reply statement is also far from satisfactory.

12. It is well settled that the aid of experts can be availed during the



trial to compare the disputed signature. Even if Sections 45 and 47 of Indian Evidence Act is to be invoked and an opinion is obtained, it cannot be treated on par with oral or documentary evidence. In any event, such a relief of seeking comparison of the disputed signature has to be availed at the earliest point of time and not at the stage of appeal before the appellate Court. If one of the litigants fail to exercise his right in seeking the opinion of the expert during trial, he is legally estopped from seeking the relief of comparing the signature at the appellate stage. However, it is to be stated that at the appellate stage, only in extraordinary circumstance, the relief could be granted. In this case, no such extraordinary circumstance has been shown. The Appellate Judge had in exercise of her discretion refused to allow the application to compare the signature of the appellant. Such a relief can be prayed for only in rare circumstances and if it is shown to be justifiable then the application can be entertained.

13. Even otherwise, the theory put forth by the Defendant placing reliance on the judicial precedents of the Hon'ble Supreme Court in **(2008) 4 SCC 530 [Thiruvengadam Pillai vs. Navaneethammal and another]** and subsequent decision has no bearing to the issues in this case. The learned Senior Counsel for the Respondent relied on the *ratio decidendi* of the case



and Sections 101 and 102 of the Indian Evidence Act to buttress his submission. The learned Senior Counsel for the Respondent invited the attention of this Court to paragraph 2 of the above decision wherein the facts of the case was discussed which is extracted as under:-

“2. In the plaint, the Plaintiff (appellant) alleged that the first Defendant (Adilakshmi) agreed to sell the suit schedule property to him under an agreement of sale dated 5.1.1980 for a consideration of Rs.3,000/-, and received Rs.2,000/- as advance. She agreed to execute a sale deed by receiving the balance consideration of Rs.1,000/- within three months. Possession of the suit property was delivered to him, under the said agreement. He issued a notice dated 14.2.1980 calling upon the first Defendant to receive the balance price and execute the sale deed. The first Defendant sent a reply denying the agreement. To avoid performing the agreement of sale, the first Defendant executed a nominal sale deed in regard to the suit property in favour of the second Defendant (first Respondent herein), who was her close relative. The said sale was neither valid nor binding on him. On the said averments, he sought specific performance of the agreement of sale, against the Defendant, alleging that he was ready and willing to perform his part of the contract.”

14. In this case, the Defendant had not sent reply to the pre-suit notice. This was discussed by the learned trial Judge while decreeing the suit. In the above decision the dispute is with respect to thumb impression and the case on hand deals with signature in the re-conveyance agreement.

15. The learned Senior Counsel for the Respondent also invited the attention of this Court to paragraph 15 of the above said reported decision which reads as under:

“15. [Section 45](#) of the Indian Evidence Act, 1872 relates to



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'opinion of experts'. It provides inter alia that when the court has to form an opinion as to identity of handwriting or finger impressions, the opinion upon that point of persons specially skilled in questions as to identity or handwriting or finger impressions are relevant facts. [Section 73](#) provides that in order to ascertain whether a finger impression is that of the person by whom it purports to have been made, any finger impression admitted to have been made by that person, may be compared with the one which is to be proved. These provisions have been the subject matter of several decisions of this Court.

15.1. In [The State \(Delhi Administration\) v. Pali Ram](#) [1979 (2) SCC 158] this Court held that a court does not exceed its power under [section 73](#) if it compares the disputed writing with the admitted writing of the party so as to reach its own conclusion. But this Court cautioned : "Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert."

The caution was reiterated in [O. Bharathan vs. K. Sudhakaran](#) 1996 (2) SCC 704. Again in [Ajit Savant Majagvai v. State of Karnataka](#) [1997 (7) SCC 110] referring to [section 73](#) of the Evidence Act, this Court held :

"The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under [Section 45](#) or by anyone familiar with the handwriting of the person concerned as provided by [Section 47](#) or by the Court itself.

As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has no power to compare the disputed signature with the admitted signature as this power is clearly available under [Section 73](#) of the Act."



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15.2. In [Murari Lal v. State of Madhya Pradesh - 1980 \(1\) SCC 704](#), this Court indicated the circumstances in which the Court may itself compare disputed and admitted writings, thus :

"The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. [Section 73](#) of the Evidence Act expressly enables the court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and the voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the court to compare the writings and come to its own conclusions. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence."

The decision in [Murari Lal](#) (supra) was followed in [Lalit Popli v. Canara Bank & Ors.](#) [2003 (3) SCC 583]."

16. Thus, there is no bar or embargo for the Court to compare the admitted and disputed signatures on its own to ascertain whether a writing is that of the person by whom it purports to have been written. In this case, the learned trial Judge on comparing the disputed signature with that of the admitted signature of the Defendant accepted that there is no glaring dissimilarity in the signatures in Ex.A-1 and the admitted signature of the Defendant. The learned Judge had duly exercised his power to compare the signature in the absence of any application taken out by the Revision Petitioner-Defendant.



17. It is well settled that disputed hand writing, if any, can be compared by the Judge, Lawyer and Teachers who are experts in the course of professionas held in the decision in **(2008) 4 SCC 530 [Thiruvengadam Pillai vs. Navaneethammal and another]** cited by the learned Senior Counsel for the Respondent.

18. The learned Senior Counsel for the Respondent relied on the decision of this Court reported in **2022 (2) CTC 621 [P.Ponnusamy vs. Thangamuthu]** wherein it has been observed as follows:-

“12. With regard to powers of the Court to compare the disputed signature with the admitted signatures, even in the judgment relied on by the learned counsel for the appellant reported in **Thiruvengadam Pillai v. Navaneethammal and another**, (2008) 4 SCC 530, it is observed that the Court can compare the disputed signature with the admitted signatures and when it is hazardous and risky, the services of an expert can be utilised. What is observed is that “when there is a positive denial by the person, who is said to have affixed his finger impression and where the finger impression in the disputed document is vague, or smudgy or not clear, making it difficult for comparison, the Court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions.” The reported case involves comparison of finger prints and not signatures. In the case before hand, what was compared is signature.

19. The ratio laid down by this Court in the above said case squarely applies to the facts of this case. It is also well settled that power under Section



73 of Indian Evidence Act can be exercised by the Court and in exercise of such power, the learned trial Judge, compared the signature of the Defendant in Ex.A-1 and the admitted signature and did not suspect the same with respect to it's dissimilarity. Upon exercise of such discretion, the learned trial Judge decreed the suit in favour of the Respondent/Plaintiff. Further, the Revision Petitioner/Defendant had disputed this signature in Ex.A-1 in the written statement. However, no reasonable explanation had been given by the Revision Petitioner for not preferring the present application during the stage of trial. In the absence of sustainable reasons, after having suffered a decree, the Revision Petitioner is now estopped from preferring the said petition at the appellate stage. Further, the Plaintiff having proved the execution of Ex.A-1 through appropriate oral and documentary evidence, the burden shifts to Defendant to disprove the signature found in Ex.A-1. However, the Defendant failed to avail the opportunity. The Appellate Judge is therefore right in dismissing the application filed by the Revision Petitioner for comparing the so-called disputed signature in Ex.A-1 and this Court finds no merits to interfere with the order impugned in this Civil Revision Petition.

20. In the light of the above discussion, the point for consideration is answered against the Revision Petitioner and in favour of the Respondent.



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The order passed by the learned Appellate Judge dismissing I.A.No.2 of 2019 in A.S.No.24 of 2019, dated 15.07.2021 is found not perverse and the same is to be confirmed.

In the result, this **Civil Revision Petition is dismissed**. The order dated 15.07.2021 passed by the learned Appellate Judge dismissing I.A.No.2 of 2019 in A.S.No.24 of 2019 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

21-12-2024

SRM

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

- 1.The Additional District and Sessions Judge,
Dharmapuri.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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CRP No. 2148 of 2021

SATHI KUMAR SUKUMARA KURUP, J

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Order made in
CRP.No.2148 of 2021



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