



C.R.P.(MD)No.1434 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.01.2024

Pronounced on : 09.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1434 of 2019

and

C.M.P.(MD)No.7617 of 2019

S.Palaniammal

... Petitioner/
Petitioner/
Appellant

Vs.

K.Ganesan

... Respondent/
Respondent/
Respondent

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.14 of 2019 in A.S.No.23 of 2019 dated 27.06.2019 on the file of the Additional District Court/Fast Track Mahila Court, Karur.

For Petitioner : Mr.K.Suresh

For Respondent : Mr.V.Balaji



C.R.P.(MD)No.1434 of 2019

WEB COPY

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.14 of 2019 in A.S.No.23 of 2019 dated 27.06.2019 on the file of the Additional District Court/Fast Track Mahila Court, Karur, dismissing the application filed under Section 45 of Indian Evidence Act.

2. The respondent/plaintiff has filed a suit in O.S.No.436 of 2014 for recovery of Rs.1,10,000/- (Rupees One Lakh and Ten Thousand only) with interest and costs, due on the promissory note dated 05.05.2014 executed by the deceased K.Shanmugam, from and out of the estate left by the deceased Shanmugam, available in the hands of the revision petitioner/first defendant and the second defendant, wife and mother of the deceased Shanmugam. The revision petitioner/first defendant has filed a written statement taking a defence that her husband Shanmugam has neither borrowed any amount nor executed any promissory note in favour of the respondent/plaintiff, that the signatures found in the suit promissory note are not that of her husband and that the alleged suit promissory note is a rank forgery and it has been created, concocted and fabricated by forging the signature of her husband. After trial, the learned trial Judge, by holding



C.R.P.(MD)No.1434 of 2019

WEB COPY

that the plaintiff has proved the execution of the pronote, decreed the suit as prayed for. Aggrieved by the judgment and decree dated 03.08.2016, the revision petitioner/first defendant has preferred an appeal and the same was taken on file in A.S.No.29 of 2017 on the file of the District Court, Karur and subsequently, the appeal was made over to the Additional District Court/Fast Track Mahila Court, Karur and is pending in A.S.No.23 of 2019. Pending appeal, the revision petitioner/first defendant has filed an application under Section 45 of Indian Evidence Act seeking appointment of Advocate Commissioner for taking the suit promissory note containing the disputed signature along with the documents containing the admitted signature of the deceased Shanmugam to the Additional Director of Forensic Department, Madurai and to get expert opinion.

3. The case of the revision petitioner/first defendant is that though she has taken a specific stand that the suit promissory note is a rank forgery, the respondent/plaintiff has not taken any steps to compare the signatures and to get expert opinion before the trial Court, that the trial Court has also not properly considered the above aspects and wrongly decreed the suit, that the revision petitioner/first defendant has already



C.R.P.(MD)No.1434 of 2019

filed an application to send for the documents from Velur Co-operative Town Bank Limited, Velur, relating to the loan obtained by her husband Shanmugam and the documents executed by him therefor and that therefore, in order to prove her defence, she was constrained to file the above application to send the suit promissory note and other documents containing the admitted signature of the deceased Shanmugam for comparison and opinion.

4. The respondent/plaintiff has filed a counter statement raising serious objections and further stated that since the execution of the suit promissory note was proved before the trial Court, the trial Court has decreed the suit, that the suit promissory note is dated 05.05.2014 and the suit was filed in the year 2014, that the suit was decreed in the year 2016 and the appeal was filed in the year 2017, but the present application was filed in the year 2018, that the revision petitioner/first defendant is only having intention to prolong the proceedings as long as possible preventing the respondent/plaintiff from realising the fruits of the suit decree and the above application is highly belated and that the revision petitioner/first defendant ought to have taken steps before the trial Court itself.



C.R.P.(MD)No.1434 of 2019

WEB COPY

5. The respondent/plaintiff has taken a stand that the documents sought to be compared with the suit promissory note are not contemporaneous documents and that therefore, the application is liable to be dismissed. The learned Appellate Judge, after enquiry, has passed the impugned order dated 27.06.2019, dismissing the application. The learned Appellate Judge has assigned two reasons for the dismissal.

1. Though the revision petitioner/first defendant has taken the plea of forgery in the written statement, she has not taken any steps to send disputed signatures with documents containing admitted signatures for comparison and getting expert opinion and that no reason has been assigned by the revision petitioner/first defendant for not taking steps before the trial Court.
2. The suit promissory note is dated 05.05.2014 and the documents sought to be compared are of the year 2005 and 2010 and that since they are not related to the contemporaneous period of the suit promissory note, the same cannot be utilized for comparison.

6. The learned counsel appearing for the revision petitioner would submit that since the documents sought to be compared containing the



C.R.P.(MD)No.1434 of 2019

admitted signatures of the year 2010, the same can be used for comparison and there is no straightjacket formula for deciding what is contemporaneous signature and it is only for the expert to decide about the same.

7. The learned counsel appearing for the revision petitioner has relied on the Full Bench Judgment of the Hyderabad High Court in ***Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu and others*** reported in **2016 (2) MWN (Civil) 1**,

“We accordingly answer the reference as under :

It is essentially within the judicious discretion of the Court, depending on the individuals facts and circumstances of the case before it, to seek or not to seek Expert Opinion as before it, to seek or not to seek Expert Opinion as to the comparison of the disputed Handwriting / Signature with 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 Handwriting / Signatures with



WEB COPY



C.R.P.(MD)No.1434 of 2019

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. The view expressed by the Division bench in Janachaitanya House Ltd. Vs. Divya Financiers, 2002 (3) ALT 409 (DB), as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue”.

8. This Court in the case of ***Chinnadurai Vs. Akkumari (C.R.P(PD) (MD)No.76 of 2021 dated 08.06.2021)*** by following the Full Bench judgment of the Hyderabad High Court has observed,

“12.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. As rightly observed by the Hyderabad High Court, it is for the expert to decide as to whether the admitted and disputed



WEB COPY



C.R.P.(MD)No.1434 of 2019

documents are capable of comparison for a viable expert opinion. In the case on hand, as already pointed out, the time gap is about three years and 8 months and as such, it is only for the expert to decide about the capability of comparison.”

9. Considering the above, the contention of the respondent/plaintiff and the decision of the Appellate Court in this regard cannot be sustained. But at the same time, now turning to the main reason assigned that the revision petitioner/first defendant has not taken any such steps now taken before the Appellate Court, before the trial Court. The learned counsel appearing for the revision petitioner would submit that the respondent/plaintiff alone, who has filed the suit and claimed the relief, is duty bound to take steps for sending the documents for comparison and for expert opinion, that the respondent/plaintiff's failure to take such steps has not been properly considered by the trial Court and that since the suit has been decreed, by specifically observing that the execution of the suit promissory note has been proved, the revision petitioner/first defendant was forced to file the above application.



C.R.P.(MD)No.1434 of 2019

WEB COPY

10. The learned counsel appearing for the revision petitioner would further submit that there is no specific bar or prohibition for taking steps to send the documents for comparison and for expert opinion before the Appellate Court and relied on the decision of a learned Judge of this Court in ***Palaniammal and others Vs. Palaniswami and others*** reported in **2003 3 L.W. 649**,

“C.P.C., Order 41, Rule 27, Evidence Act Section 73 – Application filed pending appeal against dismissal of suit for specific performance – Prayer seeking appointment of handwriting expert to compare the disputed signature with other admitted signatures – Trial court has invoked S.73 and compared the signatures – Lower court dismissed the prayer – Revision against order – Held, upholding the order of lower appellate court: Merely because of the reason that the trial court has compared the admitted signature and the disputed signature invoking Section 73 there is no bar or ban for the court sending the documents for canvassing the expert's opinion.”

11. In the above decision, the learned Judge has specifically observed that though the trial Court has invoked Section 73 of the Indian



C.R.P.(MD)No.1434 of 2019

Evidence Act and compared the signatures, there is no bar or ban for the Appellate Court sending the documents for getting the expert opinion.

12. The learned counsel appearing for the revision petitioner has also relied on the decision of another learned Judge of this Court in ***N.Chinnasamy Vs. P.S.Swaminathan*** reported in ***2006 (4) CTC 850***, wherein, the learned Judge, after referring various decisions, has listed out the principles that have emerged and the learned counsel appearing for the revision petitioner has mainly relied on the following principles,

“32. From the above judgments, the following principles have emerged:

....

2. It is always safe for the Court to take the aid of handwriting expert to have the expertise to scientifically compare such handwriting with reasons.

....

10. Merely because of the reasons that the Trial court has by itself compared the admitted signature and the disputed signature invoking Section 73 of the Indian Evidence Act there is no bar or ban for the First Appellate Court for sending the documents to get the expert opinion.

....

12. When the defendant denies the signature in a particular



C.R.P.(MD)No.1434 of 2019

WEB COPY

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.”

13. In the case on hand, as already pointed out, the suit was filed in the year 2014 and the suit was decreed on 03.08.2016 and the present appeal came to be filed in the year 2017. As rightly contended by the learned counsel appearing for the respondent, though the appeal was filed in the year 2017, the revision petitioners/first defendant has not offered any reason or explanation for not filing the above application immediately after filing the appeal or thereafter.

14. The learned counsel appearing for the respondent/plaintiff would contend that since the respondent/plaintiff has examined the attestor and the scribe of the promissory note as P.W.2 and P.W.3 respectively and that since the respondent/plaintiff has proved the very execution of the promissory note, the trial Court has proceeded to decree the suit and as such, there was no chance or occasion for the respondent/plaintiff to send the suit promissory note for comparison and to get expert opinion, that the



C.R.P.(MD)No.1434 of 2019

revision petitioner/first defendant has not filed the present application before the trial Court and that when the appeal was pending from 2017 onwards, the revision petitioner/first defendant has chosen to file the above application only in 2018. Moreover, it is pertinent to note that even if an expert report is received that cannot be considered as a conclusive proof and the same is not binding on the Court and that the opinion of the expert can only be used to corroborate the other substantive evidence available in the case and no finding can be arrived at, on the basis of those opinions.

15. At this juncture, it is necessary to refer the Full Bench judgment of the Hon'ble Supreme Court in ***Chennadi Jalapathi Reddy Vs. Baddam Pratapa Reddy (Dead) through Legal Representatives and another*** reported in ***2019 (14) SCC 220***, wherein, the Hon'ble Apex Court has also referred to the decision of the Constitution Bench in ***Shashi Kumar Banerjee Vs. Subodh Kumar Banerjee*** reported in ***AIR 1964 SC 529*** and the relevant passages are extracted hereunder:

“6. In any case, to satisfy our conscience, we have gone through the evidence of PWs 1, 2, and 3. As rightly observed by the Trial Court, there is no reason to



WEB COPY



C.R.P.(MD)No.1434 of 2019

disbelieve these witnesses, whose evidence is consistent, cogent, and reliable. Though they were subjected to lengthy cross-examination, nothing noteworthy has been brought out from their deposition to discard their evidence. Thus, the evidence of PWs 1, 2, and 3 fully supports the case of the plaintiff and in our considered opinion, the High Court was not justified in rejecting their evidence.

7. As mentioned supra, the High Court mainly relied upon the opinion evidence of DW-2, the handwriting expert, who opined that the signature of the first defendant on the agreement of sale Ext. A-1 did not tally with his admitted signatures.

8. By now, it is well-settled that the Court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the Court may seek independent and reliable corroboration in the facts of a given case. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it. In this respect, reference may be made to a long line of precedents that includes Ram Chandra and Ram Bharosey v. State of Uttar Pradesh, AIR 1957 SC 381, Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529, Magan Bihari Lal v. State of Punjab, (1977)



C.R.P.(MD)No.1434 of 2019

WEB COPY

2 SCC 210, and *S. Gopal Reddy v. State of Andhra Pradesh*, (1996) 4 SCC 596.

We may particularly refer to the decision of the Constitution Bench of this Court in Shashi Kumar Banerjee (supra), where it was observed that the evidence of a handwriting expert can rarely be given precedence over substantive evidence. In the said case, the Court chose to disregard the testimony of the handwriting expert as to the disputed signature of the testator of a Will, finding such evidence to be inconclusive. The Court instead relied on the clear testimony of the two attesting witnesses as well as the circumstances surrounding the execution of the Will.”

16. The Hon'ble Apex Court has reiterated the settled legal position that expert evidence is a weak piece of evidence and not substantive in nature and it will not be safe to solely rely upon such evidence and the Court has to seek independent and reliable corroboration in the facts of a given case and that expert opinion as to a fact is not regarded as a conclusive proof of it. As rightly contended by the learned counsel appearing for the respondent, even assuming that an expert opinion is received, that opinion of the expert or the opinion formed by the learned



C.R.P.(MD)No.1434 of 2019

trial Judge himself under Section 73 of the Indian Evidence Act after comparison, can only be used to corroborate the other substantive evidence available in this case and no finding can be recorded, only on the basis of those opinions.

17. On Considering the entire facts and circumstances, this Court has no hesitation to hold that the revision petitioner/first defendant has filed the above application with sole intention to protract the proceedings as much as possible and as such, the impugned order dismissing the application filed under Section 45 of Indian Evidence Act cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

18. In the result, this Civil Revision Petition is dismissed and the impugned order passed in I.A.No.14 of 2019 in A.S.No.23 of 2019, dated 27.06.2019 on the file of the Additional District Court/Fast Track Mahila Court, Karur, stands confirmed. Since the appeal is pending from 2017 onwards, the learned Appellate Judge is hereby directed to hear the appeal in A.S.No.23 of 2019 and dispose of the same within a period of two



C.R.P.(MD)No.1434 of 2019

WEB COPY

months from the date of receipt of a copy of this order. Consequently,
connected Miscellaneous Petition is closed. No costs.

09.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Additional District Court/Fast Track Mahila Court,
Karur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)No.1434 of 2019



WEB COPY



C.R.P.(MD)No.1434 of 2019

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.R.P.(MD)No.1434 of 2019
and
C.M.P.(MD)No.7617 of 2019

Dated :09.02.2024