



CRP(MD)No.1080 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.11.2024

Delivered on : 28.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRP(MD)No.1080 of 2020

and

CMP(MD)No.7032 of 2020

Karuppiah

... Petitioner/Petitioner/Appellant

vs.

1.Poomayil

2.Mohammed Rabeek

... Respondent/Respondent/Defendant

PRAYER : Petition filed under Article 227 of the Constitution of India praying to call for the Fair and Decreetal Order, dated 18.02.2020 passed in I.A.No.105 of 2018 in A.S.No.34 of 2016 on the file of the Sub Judge, Devakottai and set aside the same.

For Petitioner : Mr.J.Anandkumar

For Respondents : No Appearance for R1

Mr.R.Murugan for R2



CRP(MD)No.1080 of 2020

WEB COPY

ORDER

The Civil Revision Petition is filed aggrieved by the order passed in I.A.No.105 of 2018 in A.S.No.34 of 2016, on the file of the learned Sub Judge, Devakottai, dated 18.02.2020.

2.The petitioner is plaintiff in the suit and appellant in A.S.No.34 of 2016. He has filed I.A.No.105 of 2018 before the learned Sub Judge, Devakottai under Order 26 Rule 10A of CPC with a prayer to send Ex.A.1, the sale agreement, to the forensic expert for comparison, which was admitted by the first respondent/first defendant. The petitioner contended before the First Appellate Court that since the trial Court did not accept the signature of the plaintiff, which found place in Ex.A.1, the said application in I.A.No.105 of 2018 was filed. The respondents before the First Appellate Court had filed a counter stating that the first respondent in the appeal had not executed any sale agreement on 23.12.2011 or on any other date. The next contention is that, Ex.B.3, the sale deed, which was executed by the first defendant in favour of the second respondent/second defendant. The sale deed was marked and the judgment was delivered negating the claim made by the petitioner/appellant/plaintiff in O.S.No.102 of 2013.



CRP(MD)No.1080 of 2020

WEB COPY

3.The First Appellate Court, while evaluating the contention of the petitioner/appellant and the respondents, had dismissed the above I.A., on the ground of delay. The suit was filed in the year 2013 and the present petition was filed seven years after passing the judgment in O.S.No.102 of 2013 on 09.09.2015.

4.Though the learned counsel for the petitioner contended that the first appeal is the continuation of the suit, as the petitioner/appellant/plaintiff has the right to file an application to dispute the signature, and hence, the application was filed.

5.Per contra, the learned counsel for the second respondent contended that when the sale deed (Ex.B.3) was executed by the first defendant in favour of the second defendant, namely, Mohammed Rabeek, the petitioner/appellant made an attempt to fill up the lacuna and on that ground, the suit itself was dismissed.

6.While evaluating the contention advanced by the learned counsel for the second respondent, the first appeal is the continuation of the trial and either party is entitled to mark any documents and can file an application for marking of



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documents through witness in adherence to Order 26 Rule 10A of CPC. When there is an unexplained delay coupled with the fact that to fill up the lacuna, which has led to dismissal of the suit before the trial Court, the petition filed by the petitioner/appellant/plaintiff cannot be entertained. Order 26 Rule 10 A of CPC, is extracted hereunder for ready reference:

“10A. Commission for scientific investigation.

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of the Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.”

7.The petitioner while filing an application to send the document for scientific examination, had not enclosed any contemporary documents for verification. The said fact, which is vital to determine whether the signature, which is in dispute, could be compared and no documents were annexed and no pleadings even in the I.A.No.105 of 2018, asking for filing an application to send the signature for expert opinion along with contemporary documents.



CRP(MD)No.1080 of 2020

WEB COPY

8. In support of his contention, the learned counsel for the petitioner had relied upon the judgment of this Court in *M.Kaliamoorthy Vs. Dhanuskodi* reported in **2015 AIR CC 937 [Second Appeal Nos.741 to 744 of 2006, dated 10.10.2014]**. In this case, this Court had come to the conclusion that the signature did not match, as found in the document filed in the suit, the second appeal was allowed by setting aside the Judgment of the Lower Appellate Court and remanding the matter to the Lower Appellate Court for fresh consideration. The relevant paragraph is extracted hereunder:

“19. In view of the ratio laid down in the above decisions, I am of the view that the Lower Appellate Court may be directed to obtain the specimen signatures of the defendant, which the learned counsel was seeking to file as additional document, so as to enable a handwriting expert to compare the same with the disputed signatures on the suit pro-notes, viz., Ex. A.1, A.4, A.7 and A.8. Accordingly, the Lower Appellate Court is directed to obtain the specimen signatures of the defendant and the handwriting expert is directed to compare the disputed signatures with that of the admitted signatures of the defendant thereafter. It is open to the defendant to take out an application under Order 26, Rule 10A CPC to appoint a Commissioner to take the documents for such comparison by the expert of Forensic Department. The Lower Appellate Court is directed to provide for sufficient safeguards for taking the disputed documents or summon the expert to the Court to do the exercise of comparison.



CRP(MD)No.1080 of 2020

WEB COPY

In view of the foregoing discussion, the matter is remitted back to the Lower Appellate Court for carrying out the above said direction and dispose of the appeals after getting the expert opinion and upon hearing both sides on the basis of such opinion of the expert. In view of the above, the appeals are allowed setting aside the judgment and decree passed by the Courts below and the same are remitted back to the Lower Appellate Court for fresh disposal, without being influenced by any of the opinion expressed by this Court, within a period of three months from the date of receipt of a copy of this judgment. However, in view of the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.”

He further relied upon the order of this Court in **CMP(MD)No.15897 of 2023 in AS(MD)No.118 of 2023, dated 22.12.2023**, wherein, this Court held that it is not in dispute that if the opinion of handwriting expert is obtained, it would help the Court to compare the disputed signature with the admitted signature. The relevant passages are extracted hereunder:-

*“.....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,*



CRP(MD)No.1080 of 2020

WEB COPY

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.”*

9.Hence, the above Judgments, which were relied upon by the learned counsel for the petitioner, are not relevant for the present case.

10.In view of the above, this Court found that when the petitioner had not annexed any contemporary documents to compare the signature. By filing an application for sending the disputed signature for forensic comparison is not tenable and needs no interference of the order passed by the First Appellate Court as the petitioner had not annexed any contemporary documents to compare the signature.



CRP(MD)No.1080 of 2020

WEB COPY

11. In view of the same, the order passed in I.A.No.105 of 2018 needs no interference and therefore, the Civil Revision Petition is dismissed. However, the learned Sub Judge, Devakottai, shall dispose of the appeal in A.S.No.34 of 2016 as expeditiously as possible, preferably, within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

28.11.2024

NCC : No

Index : No

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To

The Sub Judge, Devakottai.



WEB COPY



CRP(MD)No.1080 of 2020

N.SENTHILKUMAR,J.

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Pre-Delivery Order Made In
CRP(MD)No.1080 of 2020

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