



CMP.No.4164 of 2022
in AS.No.110 of 2022

WEB COPY

N.SATHISH KUMAR, J.

This petition has been taken out by the appellant to send Ex.A1, Promissory Note dated 19.08.2016 along with Exs.B1 to B4 and Memorandum of Deposit of Title Deeds dated 11.01.2016 for the opinion of the Expert attached to the Forensic Science Department.

2. As far as production of the additional documents is concerned, filing any such document at the appellate stage is not automatic, but subject to the fulfilment of the conditions set out in Order 41 Rule 27 CPC. The general rule is that the appellate Court should not look beyond the evidence let before the lower Court and cannot take any additional evidence on appeal. However, Order 41 Rule 27 of the CPC makes an exception that permits the appellate Court to take additional evidence in special circumstances. If the conditions outlined in this Rule are complied with, the appellate Court may allow additional evidence.

Order 41, Rule 27 reads as follows:

"27(1) The parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary in the Appellate Court, but if:



WEB COPY



(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the party seeking to adduce additional evidence satisfies the Appellate Court that such evidence notwithstanding the exercise of due diligence was not within his knowledge or could not be produced by him at or before the time when the decree under appeal was passed,

(c) the Appellate Court requires any documents to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause, the appellate court may allow such evidence or document to be produced or witness examined.

(2) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission."

3. Therefore, if the conditions (a) and (b) mentioned under Order 41, Rule 27 are not met out, the appellant cannot seek any indulgence from this Court. At the same time, the fact remains that the main issue revolving around the suit is with regard to the execution of the promissory note said to have been executed by one S.R.Anbalagan, who is the husband of the first defendant and father of the plaintiffs.

4. Though, the trial Court has compared the signatures on its own with the documents produced by the defendants, it is the contention of the learned Senior counsel for the appellant that the registered equitable mortgage deed



was executed by the deceased Anbalgan in favour of M/s.Equitos Bank and the execution of the document is also not disputed in the counter. Therefore, if the registered document executed by the deceased during contemporaneous period is compared with that of the suit documents, it will pave to unearth the truth. However, the Court below, without considering these aspects, has erroneously rejected the petition, which requires interference by this Court and hence, he would urge this Court to allow the present petition.

5. Heard the learned senior counsel for the appellant and the learned counsel for the respondents and perused the entire materials available on record.

6. As the very issue involved in the suit is with regard to the proof of signature of one S.R.Anbalagan contained in Ex.A1 promissory note, the appellant wants to avail the forensic expert's opinion by comparing the documents, viz., Ex.A1 Promissory Note, Exs.B1 to B4 along with registered memorandum of Deposit of Title Deeds executed by Mr.S.R.Anbalagan.



WEB COPY

7. Therefore, this Court is of the view that in order to decide the issue and adjudicate the matter effectively and to advance substantial justice, it is essential to send Promissory Note Ex.A1, Exs.B1 to B4 and the registered memorandum of Deposit of title deeds Ex.A9 (certified copy) for comparison of the deceased S.R.Anbagalan contained in the said documents to the Forensic Department for getting Expert's opinion.

8. Accordingly, this petition is allowed under Order 41 and Rule 27 CPC. Considering the very issue is with regard to the disputed signatures and thumb impression contained in Ex.A1, Ex.B1 to B4 and the certified copy of the document received and marked as Ex.A9 subject to proof and reliability. The documents are marked only for the purpose of sending the documents for Forensic examination.

9. Accordingly, Mr.R.Mubarak Basha, Advocate, (Enroll.No.811/97) (Mobile no.99949-99092), No.6(17/2) Mactorm Sheriff Street, Barracks Road, Periamet, Chennai-600 003 is appointed as Advocate Commissioner to receive Ex.A1, Ex.B1 to B4 and xerox copy of Ex.A9 from the Registry



and send the same to the Forensic Laboratory and get the signature and thumb impression of the excutant S.R.Anbalagan compared and to file report on or before 24.03.2025. The fee of the Advocate Commissioner is fixed at Rs.25,000/- apart from the expert of the Forensic Laboratory. The Advocate Commissioner's fee as directed above shall be paid by the appellant directly to the Advocate Commissioner.

10. The Registry is directed to handover the documents referred above to the Advocate Commissioner to send the same to the Director of Forensic Sciences, No.38, Kamarajar Salai, Mylapore, Chennai to ensure that the documents are compared by the Expert expeditiously and thereafter, hand over the same to this Court.

11.Post on 24.03.2025.

dn

04.02.2025



WEB COPY

6



N.SATHISH KUMAR, J.
dn

CMP.No.4164 of 2022
in AS.No.110 of 2022

04.02.2025