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C.R.P.(PD).No. 759 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No. 759 of 2022

&

C.M.P. No. 3811 of 2022

A.Saburabee

...Petitioner

Vs.

C.Panneerselvam

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 02.11.2021 made in IA.No.420 of 2018 in OS.No.620 of 2017 on the file of the I Additional Sub Court, Villupuram.

For Petitioner : Mr. N.Manoharan

For Respondent : No Appearance.



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ORDER

Aggrieved by the dismissal of her petition seeking an expert opinion with reference to the disputed signature in Ex.B.1, original sale deed dated 04.01.2011 and Ex.A.1 promissory note dated 09.09.2024, the defendant is before this Court. The brief facts are herein below set out.

2. The respondent / plaintiff had filed a suit O.S.No.620 of 2017 on the file of the I Additional Sub Court, Villupuram, for a recovery of a sum of Rs.3,39,835/- with interest at the rate of 12% per month on a sum of Rs.2,50,000/-. It is the case of the respondent / plaintiff that the petitioner herein had borrowed a sum of Rs.2,50,000/- from the respondent on 09.09.2014 and had executed a promissory note dated 09.09.2014.



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3. Since the amount was not returned when demanded the respondent issued a legal notice on 22.07.2017, to which the petitioner / defendant had sent a reply dated 03.08.2017.

4. Thereafter, the plaintiff had come forward with the suit in O.S.No.620 of 2017. The defense taken by the defendant is that she had never obtained any loan of Rs.2,50,000/- from the plaintiff and that she had not executed Ex.A.1. That apart, she had stated that she did not know the Kandambakkam village, where the promissory note is said to have been executed. She did not even know the respondent.

5. The petitioner had also submitted that after she had received summons and perused the records, she realised that the promissory note had been created fraudulently. The scribe whose name has been shown in the promissory note is not known to the petitioner. She would submit that she had purchased the property from one Subramanian on 04.02.2011, under a registered sale deed and possession was handed



over to her.

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6. The said Subramanian had assured the petitioner that he had settled the loan from the bank and the loan he had taken from others. However, later the petitioner came to know that Subramanian had not settled his dues. Meanwhile, the said Subramanian lodged a false complaint against the petitioner's husband on the file of the Kallakurichi Police Station on 19.02.2011. Thereafter, during enquiry the complaint was held to be false and Subramanian assured that he would settled the dues and had given a letter to this effect on 23.02.2011.

7. It appears that in order to wreck vengeance, Subramanian setup the plaintiff to institute a false case. The said Subramanian was examined as P.W.2 and he had admitted the execution of Ex.B.1 sale deed. Therefore, in order to prove the disputed signature in Ex.A.1, the petitioner has come forward with the application for an expert opinion.



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8. The respondent had filed a counter denying the contention that Ex.A.1 was a forged documents. It is also the contention of the respondent that the petition was not maintainable. Therefore, he sought to have the petition dismissed.

9. The learned Trial Judge dismissed the said application stating that this application is an attempt to collect evidence. Therefore, the petition deserved to be dismissed.

10. Challenging the same, the petitioner is before this Court.

11. Heard the learned counsel for the petitioner and perused the records.

12. The contention of the petitioner is that the document in question is a forged document and the signature therein is not hers. It



is to prove this fact that the petitioner seeks an expert opinion.

Whether the disputed signature and the admitted signature are of the same person is for the expert to decide. The petitioner has rightly taken out this application for having her signature examined by the expert to substantiate her contention.

13. The learned Judge has totally misconstrued the request as one aimed at collecting evidence as in the case of Advocate Commissioner appointed for noting down physical features of immovable properties. Section 45 of the Evidence Act, deals with an opinion of experts relating to the identity of hand writing or a finger print expert. Therefore, the observation of the learned Trial Judge that the petitioner is attempting to gather evidence is not correct as the petitioner is only seeking the opinion of an expert as contemplated under Section 45 of the Evidence Act to substantiate her contention.



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14. Therefore, the Civil Revision Petition is allowed.

Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No

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To

The I Additional Sub Court,
Villupuram.



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P.T. ASHA, J,

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