

CRP NO.1373 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 26 / 11 / 2024

ORDER PRONOUNCED ON : 10 / 03 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NO.1373 OF 2023

AND

CMP NO.9207 OF 2023

Selvi
S/o.Kathirvel
No.31, Bramanar Street,
Kottucherry Commune, Karaikal.

... Petitioner /
Petitioner /
Defendant

Versus

Kulothungan
S/o.Krishnamoorthy
No.34, Pulain Thoppu,
Varichikudy, Kottacherry Commune,
Karaikal Town and Munsif.

... Respondent /
Respondent /
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated December 13, 2022 made in I.A.No.5 of 2022 in O.S.No.23 of 2019 by the learned Additional District Judge, Karaikal.

For Petitioner : Mr.Ramkumar Natarajan
for Mr.Adarsh Subramanian



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For Respondent : Mr.S.P.Vijayaraghavan

ORDER

This Civil Revision Petition is directed against the order dated December 13, 2022, passed in I.A.No.5 of 2022 in O.S.No.23 of 2019 by the 'learned Additional District Judge, Karaikal' [in short 'Trial Court'].

2. The case of the respondent/plaintiff is that the petitioner/defendant borrowed a sum of Rs. 5,30,000/- from the plaintiff and executed a Promissory Note on March 10, 2017, agreeing to repay the amount on demand with interest at 12% per annum. On March 21, 2019, the plaintiff sent a demand notice to the defendant, calling upon her to repay the entire amount of principal and interest due under the Promissory Note. The defendant duly acknowledged the notice on March 25, 2019. However, the defendant has neither come forward to pay any amount nor issued any reply. Consequently, the plaintiff has filed a Suit for the recovery of money.

3. The petitioner/defendant filed a written statement denying the allegations made in the plaint. It is stated in the written

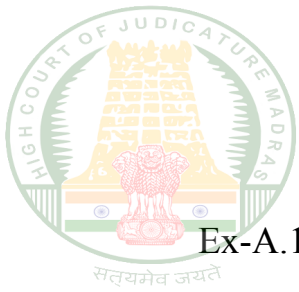


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statement that the plaintiff forged the defendant's signature and filed a fraudulent claim against her. The defendant claims that she did not execute the alleged Promissory Note dated March 10, 2017, and that she did not borrow any amount from the plaintiff at any point in time. Therefore, the defendant prayed to dismiss the Suit.

4. In the meantime, the defendant filed I.A. No. 4 of 2021 praying to send the promissory note for expert opinion to compare the signature found in the Suit promissory note with the Trust Deed dated July 08, 2019. The Trial Court observed that signatures should be compared with those from a contemporaneous period to the alleged Promissory Note dated March 10, 2017 and that the Trust Deed was executed on July 8, 2019 *i.e.*, after institution of the Suit, and the signature found therein is not a contemporaneous one. Accordingly, the Trial Court dismissed the Interlocutory Application on December 13, 2022, granting liberty to file any document predating Ex-A.1 – Suit Promissory Note.

5. Meanwhile, the defendant filed another Interlocutory Application in I.A. No.5 of 2022 in O.S.No.23 of 2019, seeking appointment of an Advocate Commissioner to take the documents, namely

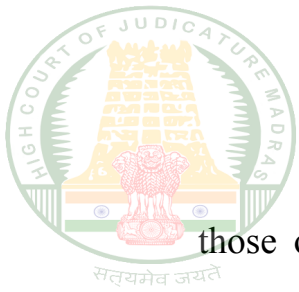


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Ex-A.1 – Suit Promissory Note dated March 10, 2017 and the Sale Deed dated March 11, 2015, for scientific investigation and signature comparison. However, the Trial Court dismissed I.A. No. 5 of 2022 on December 13, 2022, holding that the application was merely a repetition of the earlier request and that the documents sought for comparison were not contemporaneous, making the scientific examination unnecessary and serving no fruitful service.

6. Feeling aggrieved, the petitioner/defendant has filed the present Civil Revision Petition seeking to set aside the order passed in I.A. No. 5 of 2022 in O.S. No. 23 of 2019.

7. The learned counsel for the petitioner submitted that the Trial Court, without properly considering the nature of the document, dismissed the Interlocutory Application. The Trial Court observed that the petitioner should have furnished documents such as a passport and other identification papers for signature comparison. However, since the passport and PAN Card were obtained in the year 2010, the signatures on those documents are not contemporaneous with the signature on the Promissory Note. Therefore, comparing the signature on the Promissory Note with



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those on the passport and PAN Card may not be relevant. The learned counsel further argued that the signature on the Sale Deed dated March 11, 2015, is contemporaneous in nature and therefore, there is no impediment for sending it for expert opinion. Hence, the learned counsel contended that the Trial Court erred in dismissing the Interlocutory Application. Accordingly, he prayed to allow the Civil Revision Petition.

8. Per contra, Mr.S.P.Vijayaraghavan, learned Counsel appearing for the respondent/plaintiff would argue that the sale deed dated March 11, 2015 was not a contemporaneous document. Hence, no useful purpose would be served if it is sent for expert opinion. He relied on the Hon'ble High Court of Hyderabad's Judgment in ***Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and Ors.***, reported in ***2015 SCC Online Hyderabad, 467***, wherein it has been held in Paragraph No.12 as follows:-

“a) Are contemporaneous handwritings/signatures always or normally necessary for comparison and report.

‘Comment: Document Experts prefer to have writings/signatures that are contemporaneous which are as close to the document in question and where possible



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of a similar nature.

It is not always necessary to have the contemporaneous writing for comparison purpose.

However, handwritings/signatures are normally necessary for better evaluation of the writing habits and establish the range of natural variation of the writer during the period.

`b) What is the meaning of contemporaneous, and what tis the measure of contemporaneity.

Comment: Contemporaneous means occurrence at same period of time. No specific measure could be assigned to the element of contemporaneity. On of the famous authors in the field of examination of documents. Ordway Hilton, in his famous book Scientific Examination of Questioned Documents, states that material written two or three years before or after the disputed writing serve as satisfactory standards and the same is enunciated in page 11 of the Annexure enclosed.”

8.1. Accordingly, he prayed to dismiss the above Civil Revision Petition.

9. This Court has carefully examined both sides’ submissions and perused the records.



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WEB COPY 10. In the earlier Interlocutory Application in I.A.No. 4 of 2022, the Trust Deed sought to be sent for expert opinion was executed after institution of the Suit and hence it is not a contemporaneous one. The petitioner's Passport and PAN Card were issued around the year 2010 and are also not contemporaneous with the Suit Promissory Note and cannot be considered for comparison. However, the sale deed dated March 11, 2015 was registered prior to the suit promissory note. Considering the facts and circumstances of the case, and in the interest of justice, this Court is of the view that the sale deed dated March 11, 2015 has to be sent to the expert opinion for comparison of signature with that found in the Suit promissory note. The plaintiff would not be prejudiced by this Order since the expert opinion is a mere opinion and it needs further corroboration. There is no quarrel with the case law relied on by the learned Counsel for the respondent / plaintiff.

11. Accordingly, the Order dated December 13, 2022, passed in I.A. No. 5 of 2022 in O.S. No.23 of 2019 by the learned Additional District Judge, Karaikal, is set aside, and the Civil Revision Petition is allowed. The Trial Court is directed to send the Sale Deed dated March 11, 2015



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along with the Promissory Note dated March 10, 2017, for expert opinion.

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In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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R. SAKTHIVEL, J.

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To

The Additional District Judge
Karaikal.

PRE-DELIVERY ORDER MADE IN

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