

C.R.P(MD)No.2157 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 29.01.2025
DELIVERED ON : 10.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.2157 of 2023
and
C.M.P(MD)No.10828 of 2023

T.Sivaprakasam

... Petitioner

Vs.

1.V.Karuppaiah (Died)

2.Chitra Rani

3.K.Avinash

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records of the order in I.A.No.926 of 2017 in O.S.No.489 of 2016 on the file of the II Additional Subordinate Judge, Trichirappalli, dated 07.02.2023 and allow this Civil Revision Petition and pass such further or other orders as this Court.

For Petitioner : Mr.A.Haja Mohideen

R-1 : Died



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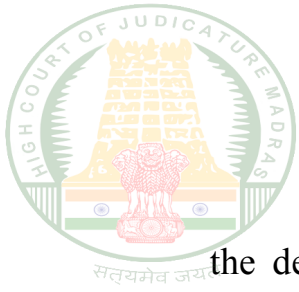
For R-2 : Mr.A.Balakrishnan

For R-3 : No appearance

ORDER

The present Civil Revision Petition is preferred against the order passed in I.A.No.926 of 2017 in O.S.No.489 of 2016 on the file of the II Additional Subordinate Judge, Trichirappalli, dated 07.02.2023.

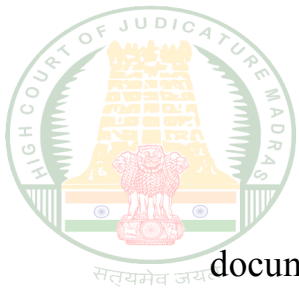
2. The revision petitioner is the defendant in the above suit. The deceased first plaintiff filed the above suit in O.S.No.489 of 2016 for recovery of money based on a promissory note, dated 18.01.2015 against the revision petitioner / defendant. Pending suit, the first plaintiff died and his legal heirs were impleaded in the suit, who are the respondents 2 and 3 in this revision petition. According to the plaintiffs, on 18.01.2015, the defendant has borrowed a sum of Rs.4,00,000/- for his family expenses and executed a pro note in favour of the deceased first plaintiff and agreed to repay the same on demand together with interest at 12% per annum. The pro note was duly signed and attested by witness. In spite of repeated demands



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the defendant failed to repay the said amount. Hence, the deceased first plaintiff was constrained to file the above suit for recovery of money.

3. On the other hand, the defendant, who is the revision petitioner herein in his written statement has contended that the suit pro note is a fabricated document and the signature found in the pro note do not belong to the defendant and therefore, prayed for dismissal of the suit. Pending suit, the defendant filed an application in I.A.No.926 of 2017 for sending the alleged pro note for hand writing expert opinion to establish the fact that the signatures found in the pro note do not belong to the defendant. The said application was resisted on the side of the respondents / plaintiffs stating that in the suit pro note, the petitioner has put his signature in Tamil, whereas, the signatures found in the specimen documents are found to be in English. Hence, the disputed signature and the admitted signatures cannot be compared by an expert for the above stated reason. The Trial Court dismissed the said application stating that the disputed signature in the pro note is found to be in Tamil and the specimen signatures are found to be in English and also observed that the application is filed only to protract the proceedings and therefore, the purpose would not be served by sending the

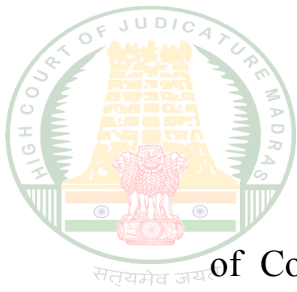


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documents for comparison by an expert. Assailing the said order, the defendant has preferred the present revision petition.

4. The learned Counsel appearing for the revision petitioner submits that even in the written statement, the revision petitioner has denied the signature found in the suit pro note stating that the same is a fabricated document. Unless there is an expert opinion with regard to the signature found in the suit pro note, the defendant cannot establish his case. The learned Counsel appearing for the revision petitioner submits that the Trial Court failed to see that the said application was filed for expert opinion to ascertain the genuineness of the signatures found in the alleged pro note.

5. The learned Counsel appearing for the revision petitioner further submit that though the burden is on the plaintiff to prove the signature, the plaintiff has not taken any application for expert opinion, whereas the defendant herein filed the said application for expert opinion and the same cannot be treated as an attempt to drag on the proceedings. His further contention is that all procedures are to be understood as permissible and not prohibited, as prohibition cannot be presumed. Therefore, if in the opinion



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of Court, the opinion of expert deemed to be necessary, expert can be appointed for deciding the real dispute between the parties under Order XXVI, Rule 10A of the Code of Civil Procedure, 1908 and the Court can also appoint Advocate Commissioner for taking a document to an expert. Hence, the Trial Court ought to have allowed the application for expert opinion for comparing the disputed document along with the specimen document.

6. To support his contention, he has relied upon the following judgments:

(i) ***Saharban Beevi Vs. S.Mumtaj*** reported in **2013 (2) CTC 394**,

(ii) ***M.Kaliamoorthy Vs. Dhanushkodi*** reported in **2015 (1) CTC 256**

and

(iii) ***Sundarajan Vs. Valliyammal and Others*** reported in **2012 (3)**

T.C.J. 690 (Mad) (MB).

Therefore, the learned Counsel for the petitioner would submit that the Trial Court failed to apply its mind in sending the disputed document along with the specimen document for comparison by an expert.



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7. It is also submitted that the petitioner is a senior citizen aged about 75 years old and the signature of the defendant in the vakalath, written statement and counter affidavit can be taken as specimen signature for comparison.

8. On the other hand, the learned Counsel appearing for the respondent submits that the petitioner / defendant having borrowed money from the deceased first plaintiff executed the suit pro note in the presence of witnesses had denied the same in order to defeat the claim made by the plaintiff. Moreover, in the suit pro note, the defendant has put his signature in Tamil and whereas in the specimen documents, the signatures are found to be in English. Hence, the learned Counsel for the respondent submits that the Trial Court has rightly considered the same and dismissed the said application which calls for no interference.

9. Heard the learned Counsel for the petitioner and the learned Counsel for the second respondent and perused the materials available on record.



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10. It is urged on the side of the revision petitioner that the signature found in the suit pro note do not belong to him and therefore in order to ascertain the genuineness of the signatures found in the alleged pro note, an expert opinion is required. However, in the present case, the signature found in the pro note is in Tamil and the specimen signatures are in English. Therefore, the Trial Court rejected the application on the said ground that the signatures cannot be compared by an expert. The learned Counsel for the revision petitioner submits that the defendant is ready to produce contemporary documents, with signatures in Tamil.

11. Considering the above facts and circumstances, this Court is inclined to dispose of the civil revision petition with the following directions:

(a) The revision petitioner / defendant shall produce contemporary documents with signatures in Tamil.

(b) In the event of such production, the Trial Court shall forward the same for expert opinion.

(c) After receipt of expert opinion, the Trial Court shall dispose the case on its own merits in accordance with law within a period of four



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months.

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12. With the above said direction, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

10.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The II Additional Subordinate Judge,
Trichirappalli.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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