

IN THE COURT OF THE DISTRICT JUDGE, KARUR
PRESENT:-THIRU R. SHANMUGASUNDARAM B.Com., L.L.B,
DISTRICT JUDGE.

Wednesday, the 04th day of October 2023

I.A.No.06/2023 IN O.S.No.29/2022

1. P.K.Selvam
2. S. Thangamani

...Petitioners/Defendants

vs.

Kandasamy

...Respondent/Plaintiff

This petition coming before me for final hearing on 21.09.2023 in the presence of Thiru. S. Mathiyalagan, advocate for the petitioners and Thiru R.K.Karthik, advocate for the respondent and upon hearing the arguments on both sides and having stood over for consideration till this day, this Court passed the following

ORDER:-

The petitioner has filed this petition seeking to issue commission by appointing Advocate Commissioner to get expert opinion with regard to the suit promissory note Ex.A1 comparing with the admitted signature and to file the report thereon.

Brief averments of the affidavit filed by the 1st petitioner/ 1st defendant is as follows:-

2) The petitioners are the defendants in the suit. The 1st petitioner/ 1st defendant submits that he has borrowed a loan for a sum of Rs.1,00,000/- from the plaintiff and he issued unfilled promissory note by signing in the one rupees stamp and signed

below the said stamp and he also issued unfilled cheque bearing No.000034 drawn on Lakshmi Vilas Bank, Karur in favour of the plaintiff as security for the said loan. The plaintiff has filed the suit based on the unfilled promissory note which he issued in favour of the plaintiff during the year 2017 when he borrowed the above said loan. Thereafter, the plaintiff has marked the suit promissory note as Ex.A1 and when he perused the same, he came to know that the signature in the promissory note is not that of him and it is forgedly created by the plaintiff. He submits that he never borrowed any amount as alleged by the plaintiff and he has not executed any promissory note. Therefore, it is necessary for him to compare the suit promissory note Ex.A1 along with the admitted signature in the settlement deed dated 29.07.2020 bearing Document No.2114/2020 on the file of the Aravakurichi SRO which was signed by him. He submits that if this petition is allowed, no prejudice would be caused to the respondent and if this petition is not allowed, he will be put to much loss and hardship. Hence, he prays to issue commission by appointing Advocate Commissioner to get expert opinion with regard to the suit promissory note comparing with the admitted signature and to file the report thereon.

Brief averments of the counter filed by the respondent/ plaintiff is as follows:-

3) The respondent/plaintiff has filed a counter denying all the allegations and averments made in the affidavit filed by the 1st petitioner/ 1st defendant. It is submitted that the 1st petitioner/ 1st defendant has executed Ex.A1 promissory note as a security for his loan and he put his signature in the said promissory note. On 20.04.2023, the plaintiff was examined as P.W.1 and the case was posted on 27.04.2023 for cross examination of the petitioner/defendant. On the said day, the petitioner/ defendant was absent and so he was called absent and was set ex parte. Thereafter, on 01.06.2023, the case was posted for plaintiff's side further evidence. On 08.06.2023, P.W.2 was examined on the side of the plaintiff and the case was posted on 15.06.2023 for arguments. On 15.06.2023, the petitioner/defendant has filed a petition to set aside the exparte decree and the same was allowed and the case

was posted for cross examination. At that time, in order to drag on the proceedings of the case, the petitioners/defendants have filed this petition. Further, it is submitted that if the petitioner has good case on merits he will pray to send the cheque bearing No.000034 drawn on Lakshmi Vilas Bank, Karur West Branch in which he signed and the notice which was sent for filing the cheque case. Hence, prays to dismiss the petition.

4) This Court consider the rival submissions on both sides.

5) The question before this Court is whether the petition has to be allowed or not?

ANSWER TO THE QUESTION

6) The petitioners are the defendants and the respondent is the plaintiff. The respondent/plaintiff has filed the suit for recovery of money based on the promissory note dated 14.10.2020 . The petitioner has filed the written statement on 11.04.2022. Based on the pleadings, this Court has framed as many as seven issues. on 20.04.2023 the plaintiff examined himself as P.W.1 and marked Ex.A1 and Ex.A7 and on 08.06.2023 one Ragavan was examined as P.W.2 and through him Ex.A8 was marked and the plaintiff side evidence was closed. When the case was posted for cross examination of P.W.1 and P.W.2, the petitioners/defendants have come forward with this petition seeking to issue commission by appointing Advocate Commissioner to get expert opinion with regard to the suit promissory note Ex.A1 comparing with the admitted signature and to file the report thereon.

7) The respondent/plaintiff has filed a counter denying all the allegations and averments made in the affidavit filed by the 1st petitioner/ 1st defendant. He has contended that in order to drag on the proceedings of the case, the petitioners/defendants have filed this petition. Further, it is submitted that if the petitioner has good case on merits he will file this case in the beginning itself. Hence, prays to dismiss the petition.

8) This Court has perused the records. Further, it is the case of the petitioner/defendant that the signature in the promissory note is not that of him and it was forgedly created by the plaintiff. Further, it is the case of the petitioners/defendants that the 1st defendant has never borrowed any amount as alleged by the plaintiff and he has not executed any promissory note. Further, he contends that the issue involved in this suit is whether the suit promissory note is a rank forged one? Therefore, for deciding the said issue, it is necessary to send the suit promissory note and the settlement deed dated 29.07.2020 bearing Document No.2114/2020 on the file of the Aravakurichi SRO for expert opinion for comparing the signatures, and obtaining report and such report is necessary for lawful adjudication of case. Hence, they pray to allow this petition.

9) The petitioners/defendants in para 21 of the written statement have pleaded that in the year 2017, the 1st defendant borrowed a sum of Rs.1,00,000/- from the plaintiff. For the repayment of the said loan, the plaintiff has obtained the signature of the 1st defendant in a empty promissory note form and also in a empty cheque bearing number 000034 of Lakshmi Vilas Bank Limited, Karur West Branch. Further, they have pleaded that the 1st defendant has discharged his debt in the year 2018. At the time of discharge of the said debt, when the 1st defendant demanded for the return of the above blank documents, the plaintiff told the 1st defendant that they were misplaced by him and he will return them after tracing them out. Now, the petitioner has stated in the affidavit that he has filed the original written statement on the impression that his signature in the unfilled promissory note has been used by the respondent/plaintiff to file the suit. Now, only after getting certificate copy of the promissory note, he came to know that the signature in the promissory note is not that of him. Not stopping with this the petitioners/defendants have also filed the petition in I.A.No.07/2023 seeking to permit them to file the additional written statement. Further, the issue No.5 has been framed whether the suit promissory note is a rank forged one as alleged by the 1st defendant. Now, the petitioners/defendants

specifically wants to disprove the signature in the suit promissory note. The petitioners/defendants in their written statement has denied the signature in the suit promissory note. Since the signature of the 1st defendant in the suit promissory note is denied by the petitioners/defendants, the scientific examination of the signature in the suit promissory note with the admitted signature of the 1st defendant in the settlement deed dated 29.07.2020 bearing Document No.2114/2020 on the file of the Aravakurichi SRO is absolutely just and necessary to arrive a proper and complete adjudication of this case. Further, the scientific examination would also assist this Court in arriving the conclusion of the matter in issues. Therefore, for the reasons stated above, the petition filed by the petitioner is liable to be allowed and the petitioners/defendants are directed to produce the settlement deed dated 29.07.2020 bearing Document No.2114/2020 on the file of the Aravakurichi SRO. Further, by accepting the prayer made in the petition would not mean that this Court has accepted the contention raised by the petitioners/defendants. Therefore, this Court is of firm opinion that the petitioner should be given fullest opportunity to contest the case. Hence, this petition is allowed.

In the result, this petition is allowed and the petitioners/defendants is directed to produce the settlement deed dated 29.07.2020 bearing Document No.2114/2020 on the file of the Aravakurichi SRO before this Court on 16.10.2023 or some other date as decided by this Court. Further, after production of the settlement deed dated 29.07.2020 bearing Document No.2114/2020 on the file of the Aravakurichi SRO, this Court shall send the suit promissory note dated 14.10.2020 ie. Ex.A1 and the settlement deed dated 29.07.2020 bearing Document No.2114/2020 on the file of the Aravakurichi SRO to the Deputy Director, the Tamil Nadu Forensic Sciences Department, Madurai through Advocate/commissioner. Thirumathi.K.Umadevi, advocate is appointed as commissioner. She is directed to take the suit promissory note dated 14.10.2020 marked as Ex.A1 and the settlement deed dated 29.07.2020 bearing Document No.2114/2020 on the file of the Aravakurichi SRO to the Deputy

Director, the Tamil Nadu Forensic Sciences Department, Madurai to hand over the same in a sealed cover to compare the disputed signature i.e. signature on the suit promissory note dated 14.10.2020 with the admitted signature in the settlement deed dated 29.07.2020 bearing Document No.2114/2020 on the file of the Aravakurichi SRO. The remuneration of the commissioner is fixed as Rs.15,000/-. For production of the document call on 16.10.2023.

Dictated to the steno-typist, transcribed by him corrected and pronounced by me in open Court on this the 04th day of October 2023.

PRINCIPAL DISTRICT JUDGE,
KARUR.