

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

Monday, the 3rd day of June 2024

I.A.No.04/2024 IN O.S.No.363/2022

Ramesh

...Petitioner/Plaintiff

vs.

- 1) Kavitha
- 2) Aswin Kumar
- 3) S. Mariyammal

...Respondents/Defendants

This petition is coming before me for final hearing on 25.04.2024 in the presence of Thiru.K. Subramanian, advocate for the petitioner and Thiru S. Ramamoorthy, advocate for the respondents 1 and 2, and 3rd respondent remained exparte even sufficient opportunity given and the counsel for respondents 1 and 2 made an endorsement that no counter and petition may be allowed 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 comparing with the admitted signatures and to file the report thereon.

Brief averments of the affidavit filed by the petitioner/plaintiff is as follows:-

2) The petitioner is the plaintiff in the above suit. He submits that he has filed a suit for recovery of money against the defendants stating that out of the lawful wedlock between one Sakthivel and the 3rd defendant, they were begotten with a son namely Rengasamy and out of lawful wedlock between the said Rengasamy and the 1st defendant the 2nd defendant were born. On 30.10.2019, the said Rengasamy has

borrowed a sum of Rs.15,00,000/- from him and executed a promissory note. He submits that he has filed the written statement in the above said suit. While so on 06.11.2019, the said Rengasamy died intestate leaving behind the respondents as his legal heirs to succeed his estate including the properties mentioned in the Attachment before judgment. After his demise, the petitioner approached the respondents to repay the same with interest. But, the respondents started to give evasive reply and failed to repay the loan amount. Further, the respondents are making hectic attempts to dispose the properties left behind Rengasamy. The respondents are not legally entitled to do so. The respondents 1 and 2 have filed their written statement. In the written statement, they would contend that the suit has been filed at the instigation of the brother of the deceased Rengasamy and his signature has been a forged one and so, it is necessary for him to send the suit promissory note along with his admitted the left hand thumb impression of the registers of the deceased Rengasamy maintained by Velayuthampalayam S.R.O. pertaining to 1) Document No.367/2012 dated 28.03.2012 and 2) Document No.437/2012 dated 30.03.2012 of Book No.1 to Forensic Lab, Madurai to get expert opinion. He submits that 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.

3) The counsel for the Respondents 1 and 2 made an endorsement in the petition that no counter and the petition may be allowed.

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 petitioner is the plaintiff and the respondents are the defendants in the main suit. The plaintiff has filed the suit for recovery of money based on the promissory note alleged to have been executed by the deceased Rengasamy. It is the case of the petitioner/plaintiff that the deceased Rengasamy has borrowed a sum of Rs.15,00,000/- from him and executed a suit promissory note on 30.10.2019 and further, after the demise of Rengasamy, the legal heirs of the deceased i.e., the respondents/defendants have failed to discharge the loan amount borrowed by the deceased Rengasamy. Therefore, the petitioner/plaintiff has filed the suit for recovery of money against the respondents/defendants herein. The respondents have appeared through their counsel and filed their written statement denying the borrowal and execution of the suit promissory note. Further, it is the specific case of the respondent/defendant that the suit promissory note is a rank forged one. This Court has framed issues and proceeded the case for trial. During the trial, the petitioner/plaintiff has filed this application under Order 26 Rule 10(A) of C.P.C to appoint an Advocate Commissioner and direct him to take the suit promissory note along with the admitted signatures found in the sale deed executed in favour of Rengasamy by Eshwaramoorthy dated 28.03.2012 and sale deed executed in favour of Rengasamy by Eshwaramoorthy dated 30.03.2012 both documents registered at Velayuthampalayam S.R.O. and hand over the same to the Forensic Science Laboratory, Madurai for comparison and get opinion from them.

7) Further, the petitioner/plaintiff has also filed the sale deeds dated 28.03.2012 and 30.03.2012 executed in favour of Ramalingam by Eshwaramoorthy along with this petition. It is seen from the above said sale deeds, that the deceased Rengasamy has put his signature and those signatures are contemporary to the suit promissory note. Therefore, the signature of the deceased Rengasamy found in the above said sale deeds are to be compared with the signature found in the suit promissory note by

the expert.

8) The respondents 1 and 2/defendants have made an endorsement stating that they have no objection to send the signature of the deceased Rengasamy to get expert opinion. The petitioner/plaintiff has filed the suit for recovery of money based on promissory note dated 30.10.2019. The respondents 1 and 2 have denied the borrowal, execution and signature in the suit promissory note.

The borrower name is deceased Rengasamy. But, in the affidavit, the name of the deceased has been mentioned as Ramalingam instead of Rengasamy. Hence, the reopen petition and amendment petition were filed. On verification of the affidavit, it reveals that the abovesaid Rengasamy name has been typed wrongly as Ramalingam in the affidavit. It is a typographical error. Hence, the name of the deceased person is Rengasamy. Hence, the amendment is not necessary.

Further, the respondents 1 and 2 in para 4 of the written statement has stated that he has not executed the suit promissory note and the signature in the suit promissory note is not that of him. The legal heirs of the deceased Rengasamy denies his signature in the suit promissory note and he has produced the original sale deeds which were signed by them. The respondents did not dispute the signatures of the said deceased Rengasamy in the above original sale deed. Therefore, the signatures found in the above said deeds are admitted signatures. Further, the above said documents were executed on 28.03.2012 and 30.12.2012 and the suit promissory note was executed on 30.10.2019. Therefore, the signatures made in the sale deeds are contemporary to the suit promissory note. When a party to the suit seeks prayer to send the impugned document for comparison it is always preferable to allow the prayer and to send the documents for comparison. The signature of the deceased Rengasamy found in the sale deed are contemporaneous period and before the suit. When the petitioner/plaintiff denied his signature of deceased Rengasamy on the suit promissory note, it is necessary to obtain the hand writing expert opinion.

Therefore, in view of the above stated facts and reasons, this Court is inclined to allow this application and it is ordered to send the suit promissory note dated 30.10.2019 for comparison with the admitted signatures of the deceased Rengasamy found in the sale deeds which were executed by deceased Eswaramoorthy in favour of Rengasamy dated 28.03.2012 (Doc.No.367/2012) and 30.10.2019 (Doc.No.437/2012) to the forensic lab.

In the result, the petition is allowed and Thiru.Bhaskaran, advocate is appointed as commissioner. He is directed to take the suit promissory note dated 30.10.2019 which was executed by deceased Rengasamy in favour of petitioner/plaintiff and the sale deed dated 28.03.2012 executed by Eshwaramoorthy in favour of one Rengasamy dated (Doc.No.367/2012) and the sale deed dated 30.03.2012 executed by the Eshwaramoorthy in favour of one Ramalingam in favour (Doc.No.437/2012) 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 of the deceased Rengasamy on the suit promissory note dated 30.10.2019 with the admitted signatures in the sale deeds dated 28.03.2012 and 30.03.2012 which were executed by the deceased Rengasamy in favour of Eshwaramoorthy. The remuneration of the commissioner is fixed as Rs.15,000/- which shall directly be paid by the petitioner/plaintiff. Report by / 12/06/2024.

Dictated to the steno-typist, transcribed by her corrected and pronounced by me in open Court on this the 3rd day of June 2024.

PRINCIPAL DISTRICT JUDGE,
KARUR.