

IN THE COURT OF THE SUBORDINATE JUDGE, RASIPURAM

**PRESENT : THIRU. J.K. DHILIP, B.A., B.L.,
SUBORDINATE JUDGE,
RASIPURAM**

Wednesday, the 11th day of September 2024

I.A.No.5/2022 in O.S.No.77/2019

Srinivasan

....Petitioner/Plaintiff

/Vs/

Palanisamy

..... Respondent/Defendant

On 11.09.2024, this petition came up before me for the final hearing in the presence of Thiru. A.Nataraj, Counsel appearing for the petitioner and Thiru. T.Sivakumar, counsel appearing for the respondent and on perusal of case records, this court delivers the following:-

ORDER

1. The petitioner has filed this petition under section 151 of the Code of Civil Procedure seeking permission to take the thumbprint of the defendant's left hand in the court's presence and then send the fingerprint to a fingerprint expert for an opinion.

2. In his affidavit, the petitioner stated that he filed an original suit against the respondent to recover an amount. In the respondent's written statement, it was claimed that the signature and fingerprints on the loan document dated 23.12.2016 do not belong to him; alleging that the petitioner impersonated him and prepared the deed with the forged signature and fingerprint. The petitioner insists that sending the fingerprint on the document to an expert for opinion is necessary to prove his case.

The petitioner states that filing this petition is essential, and if not allowed, he will suffer significant losses and damages.

3. The petitioner/respondent filed a counter-statement against the petition and denied the contentions. He expressly denied the reasons given in the petition in his counter-statement and stated that the petition should be dismissed. In the loan deed dated 23.12.2016, the signature on the first page and the second page are inconsistent, which would easily prove that it is not the signature of the respondent/defendant. The original case was listed for trial after the issues were framed. On 08.03.2021, the case was adjourned twice as the trial did not start. On 17.03.2021, a petition was filed seeking time, and the case was adjourned on 30.03.2021 for trial. Then on 30.03.2021, the petitioner was examined himself as the PW1, and only two documents were marked. The case was adjourned several times to mark the documents. This petition has been filed to deliberately drag out the case. Therefore, the petition should be dismissed.

4. The point to be decided is whether the petition should be allowed.

The Point;

5. The case documents were carefully reviewed. The petitioner was the plaintiff in the original suit, and it is contended that on 23.12.2016, the respondent/defendant took a loan from the petitioner/plaintiff and executed a loan deed to support it. Since he has not repaid the loan, an original case has been filed to recover the amount.

6. In his petition, the petitioner has argued that the respondent/defendant, in his written statement, contended that he did not execute the loan deed dated 23.12.2016 and that the document was prepared fraudulently. Therefore, he is compelled to prove that the fingerprint on the said document is that of the respondent

and the fingerprint on the questioned deed, along with the fingerprint admitted in court by the respondent. He has filed this petition saying that if compared, the document will help prove that he has written the document. On the other hand, the counter-petitioner/respondent, in his argument, has contended that the signature on the document is contradictory, and the petitioner has filed this petition intending to drag on the case further.

7. First, it is necessary to see whether the signature and fingerprint of the defendant on the deed dated 23.12.2016 have been denied. Therefore, at this juncture, carefully on perusing the written statement filed by the respondent/defendant; in paragraph seven reads as follows: "தாவா பிராதுடன் ஒப்பி வைக்கப்பட்டுள்ள 23.12.2016 தேதியிட்ட கடன் பத்திரத்தில் காணப்படும் பிரதிவாதியின் கையொப்பம் மற்றும் கைரேகைகள் இப்பிரதிவாதி உடையது அல்ல. வாதி போர்ஜரியாக ஆள்மாறாட்டம் செய்து கையொப்பம் மற்றும் கைரேகை இட்டு கடன் பத்திரம் தயார் செய்து வாதி அக்கிரம லாபம் அடைய பிரதிவாதி மீது தாக்கல் செய்துள்ள தாவாவில் அதை ஒப்புவிக்கிறார்". Seeing the above pleadings, the signature and fingerprint on the deed have been expressly denied the signature and fingerprint on the deed. In this scenario, the petitioner/plaintiff must prove the signature and fingerprint found on the loan deed filed in the suit.

8. It has been strongly argued that the respondent has filed this petition to unnecessarily prolong the case. It is important to provide an overview of the case proceedings. After reviewing the case records, it is noted that the respondent submitted their written statement on 21.04.2020. The trial was scheduled for 25.06.2020 but has been repeatedly adjourned, with the trial date set for 08.03.2021 on special list. However, the petitioner requested multiple adjournments, further delaying the trial. After 13 hearings, on 16.11.2021, the chief examination of the PW1 was taken for marking additional exhibits, thereafter at the request of petitioner the case was adjourned multiple times. The respondent has requested the plaintiff to

provide the list of witnesses to be examined, which has been postponed multiple times. This petition was filed when the case was scheduled for cross of PW1 on 25.04.2022. It is noteworthy that the petitioner did not immediately file this petition, despite the respondent explicitly denying the signature and fingerprints on the loan deed. The petitioner's delay in starting the trial indicates an intention to prolong the case. However, the court believes that the petitioner should be given the opportunity to prove the signature and fingerprint, despite the respondent's denial. The court also holds the petitioner responsible for compensating the respondent for the deliberate delays. Therefore, the court decides to allow this petition with costs.

In the result, this petition is allowed on payment of cost of Rs.3000/- to be paid by the petitioner to the respondent on or before 17.09.2024 failing which this petition shall stand dismissed. Call on 18.09.2024.

Dictated to the Steno typist, typed by her directly on computer, corrected and pronounced by me in the open court on the 11 th day of September 2024.

(S/d.J.K.Dhilip)
Subordinate Judge,
Rasipuram.

List of witnesses and documents from both side:- NIL

(S/d.J.K.Dhilip)
Subordinate Judge,
Rasipuram.