

IN THE COURT OF THE SUBORDINATE JUDGE AT UDHAGAMADALAM

**Present: Thiru. C.Sridhar, B.Sc., B.L.,
Subordinate Judge.**

THURSDAY, THE 21st DAY OF JULY 2022

I.A. 01/2022

In

OS. 58/2021

S. Krishnan

...Petitioner/Defendant

-Vs-

B. Sathyamoorthy

...Respondent/Plaintiff

This petition came-up on 08.07.2022 for final hearing before this Court in the presence of **Tr.Patel T.Srinivas**, Advocate for the petitioner/defendant, and of **Tr.K.Jaichandran**, Advocate for the Respondent/plaintiff. On perusing the relevant records and having stood over for consideration till this day this court delivered the following order;

ORDER

This petition has been filed by the petitioner under order 26 rule 10 (A) of CPC to appoint an Advocate of this Honourable Court to take the promissory note dated 18.11.2018 and the admitted signatures of the defendant found in the vakaluth of the defendant, served summons of the defendant, served acknowledgement of the defendant and written statement filed by the defendant and the original memorandum of deposit of title deeds dated 09.02.2016 and registered as documents No.221 of 2016 on the file of the Joint-I, Sub Registrar, Udhagamandalam of the defendant to the handwriting expert as the Honourable Court deems fit and obtain the report from the expert and submit the same into court.

BRIEF AVERMENTS OF THE AFFIDAVIT FILED BY THE PETITIONER IS AS FOLLOWS:

01. The petitioner is the defendant of the suit, and the respondent/ plaintiff has filed the above suit for the recovery of the sum of Rs.10,00,000/- together with

interest on the basis of the alleged promissory note dated 18.11.2018 executed by the petitioner in favour of the respondent/defendant and the written statement filed by the petitioner in the above suit as part and parcel of this affidavit. The petitioner have filed a written statement in the above suit and in para 3 of the written statement filed in the above suit the petitioner have pleaded that the petitioner had never executed any promissory note to the respondent/plaintiff as alleged in the plaint and the signature in the promissory note dated 18.11.2018 is not mine. In view of the plea sent for the promissory note dated 18.11.2018 filed along with the plaint by the respondent/plaintiff to the handwriting expert with the aid of the petitioner admitted signatures found in the vakaluth of the defendants, served summons of the defendant, served acknowledgement of the defendant and written statement filed by the defendant and the original memorandum of deposit of title deeds dated 09.02.2016 and registered as document No.221 of 2016 on the file of the Joint-I, Sub Registrar, Udthagamandalam.

02. Under the circumstances, unless the Honourable Court is pleased to appoint an advocate of this Honourable court to take the promissory note dated 18.11.2018 to the handwriting expert with the aid of the admitted signatures of the defendant found in the vakaluth of the defendant, served summons of the defendant, served acknowledgement of the defendant and written stated filed by the defendant and the original memorandum of deposit of title deeds dated 09.02.2016 and registered as document No.221 of 2016 on the file of the Joint-I, Sub Registrar, Udthagamandalam. Hence, he request to appoint an Advocate Commissioner.

BRIEF AVERMENTS OF THE COUNTER FILED BY THE RESPONDENTS ARE AS FOLLOWS:

02. This petition is false, frivolous and the same is not maintainable either on facts or in law. That all other allegation contained in the affidavit filed in support of the petition to set aside the exparte order are denied. The affidavit filed in support of the above petition, this respondent has “No Objection” to appoint an Advocate Commissioner to take the original suit pronote dated 18.11.2018 and the admitted

signatures of the defendant found in the vakaluth of the defendant served summons of the defendant, served acknowledgement of the defendant and written statement filed by the defendant and the original memorandum of deposit of title deeds dated 09.02.2016 and registered as document No.221 of 2016 on the file of the Joint-I Sub Registrar, Udhagamandalam to the handwriting expert for comparison and to obtain the report from the expert..

Further, that the signature which is now being disputed by the petitioner/defendant in the suit pronote may be compared in addition with the admitted signatures of the petitioner/defendant as found in

(1). Partition deed dated 21.02.2013 registered as document No.2016 of 2013 on the file of the Joint Sub register I Udhagamandalam (Plaint Document No.1)

(2). Sale Deed dated 21.01.2021 registered as Document No.78 of 2021 on the file of the Joint Sub Register I, Udhagamandalam (Plaint Document No.2)

(3). Gift Deed dated 28.04.2018 registered as document No.424 of 2018 on the file of Sub Registrar at Gundalpet.

(4). Partition deed dated 07.12.2020 and registered as Document No.4530 of 2020 on the file of the Sub registrar, Gundalpet. Which documents forms part of the court record in the above case before this Honourable court and the same may be sent to the handwriting expert for comparison and to obtain the report from the expert. Hence, he request to dismiss this petition with costs.

05. Both side no oral evidence adduced and no exhibits were marked.

06. Both side heard and case documents also perused.

POINTS FOR CONSIDERATION

07. Whether this petition has to be allowed or not?

DECISION

08. The petitioner is the defendant of the suit and the respondent is the plaintiff of the suit. The respondent/plaintiff has been filed a suit for recovery of money based on pronote and this petitioner/defendant has filed a written statement

in which denied the signature found in the pronote. So that in order to prove his defence he filed this petition to obtain the expert opinion. This petitioner further aver that the signature of suit pronote may be compared with vakalath of defendant, served summon of the defendant, served acknowledgement of the defendant and written statement filed by the defendant, memorandum of deposit of title deed as a document No 221/2016 of Joint I Sub Registrar, Ooty. However this respondent has represented that no objection to allow this petition, but he added that the defendant signature found in the 4 other registration documents may also be compared with suit pronote. This court is of opinion that the vakalath, served summons, written statement are executed after filing of suit. So that the comparison with above said documents is not reliable. Further the documents mentioned in the counter which were admittedly executed by the petitioner are not denied by this petitioner side. So that this court ordered that the admitted signature found in the 4 registered documents mentioned in the counter and 1 registered document mentioned by the petitioner in his affidavit to be compared with suit pronote. In this regard Advocate Mr.U.Sathish, appointed as an advocate commissioner and he is directed to produce the suit pronote and 5 registered documents which contained the signature of the petitioner to the forensic department, Chennai for comparison and obtain the opinion from the handwriting expert and produce before this court. His remuneration is fixed Rs.7,500/- and petitioner is directed to pay the remuneration directly to the advocate commissioner further petitioner is directed to produce the all 5 registered documents to compare with suit pronote.

Accordingly this petition is allowed, No cost.

RESULT

11. In the result, this petition is ordered to be allowed, No cost. In this regard Advocate Mr.R.Roopak, appointed as an advocate commissioner and he is directed to produce the suit pronote and 5 registered documents which contained the signature of the petitioner to the forensic department, Chennai for comparison and obtain the opinion from the handwriting expert and produce before this court. His

renumeration is fixed Rs.7,500/- and petitioner is directed to pay the renumeration directly to the advocate commissioner further petitioner is directed to produce the all 5 registered documents to compare with suit pronote.

Pronounced by me in the open court on this the 21st day of July 2022.

Sd/-C.Sridhar.,
SUB JUDGE,
UDHAGAMANDALAM.

Sub Court, Udhagamandalam
Draft/Fair Order

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OS.	58/2021
Dated.	21.07.2022.

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Order Pronounced, (21.07.2022)

In the result, this petition is
ordered to be dismissed with cost.

S.J.,