

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE AT SALEM
PRESENT: Thiru. A. M. Ravi, B.A., B.L.,
II Additional District Judge, Salem.

Tuesday, the 20th day of September 2023

I.A.No. 1/2019 & I.A.2/2019

in

O.S. 294/2018

IN BOTH THE PETITIONS

Saroja

... Petitioner/ Defendant

/Vs/

IN BOTH THE PETITIONS

R. Manimegalai

... Respondent / Plaintiff.

These petitions are taken on file on 01.02.2019 and came up before me on 07.09.2023 for final hearing in the presence of Thiru.R. Srinivasan, Advocate for Petitioner, and of Thiru.B.S.Ramesh, Advocate for the Respondents. On hearing both side arguments, and upon perusing the entire records and matter having stood over for considering till this day, this Court delivered the following :

COMMON ORDER

The Petitioner / Defendant filed these Petition under Section 45 of Indian Evidence Act and Order XXVI Rule 10B of C.P.C. to send the disputed signatures and thump impression of the Defendant in the suit promissory note along with the admitted signatures of the Petitioner to the Forensic Science Laboratory for comparison and of the disputed and admitted signatures and submit his report for which seeking appointment

of commissioner directing him to hand over the admitted and disputed signatures of the Petitioner/ Defendant contained in the documents to the FSL, Chennai.

2. The Summary of the averments in the affidavits filed by the Petitioner / Defendant in both the I.A. 1/2019 and I.A. 2/2019 are as follows:-

The Petitioner is the Defendant in this suit. The Respondent / Plaintiff filed a suit for recovery of Money based upon the promissory note dated 24.01.2018. The Petitioner / Defendant filed the written statement contending that the Petitioner never executed any promissory note in favour the Respondent here in and the suit promissory note is rank forgery and fabricated document. The signature and the thump impression should have been forged with the help of attestor and scribe of the forged pronote. To prove this contention it is necessary send the disputed signatures of the petitioner / Defendant of the suit promissory along with the admitted signatures of the Petitioner/ Defendant to the Forensic Science Laboratory for comparison of disputed and admitted signatures of the petitioner / Defendant, for which seeking appointment of Commissioner to handover the disputed and admitted signatures and thump impression of the Petitioner / Defendant contained in the documents to the FSL, Chennai.

3. The Summary of the averments in the counter statements filed by the Respondent in both the I.A. 1/2019 and I.A. 2/2019 are as follows:-

The cheque complaint filed by the Respondent / Plaintiff in STC Noi.3781/2014 on the file of the Judicial Magistrate Court No.V, Salem, the Petitioner has denied the issuance of the cheque denying her signature and filed a petition U/s 45 of Evidence Act, and after full trial the said petition was dismissed by the learned Judicial Magistrate No.V, Salem. After the dismissal of the petition U/s 45 of Limitation Act the Petitioner has settled the claim for the remaining amount and executed the suit pronote.

3.ii) In order to protract the Proceedings and defrauds the Respondent's lawful claim, the Petitioner has also filed a criminal petition before the Hon'ble High Court of Madras seeking the relief to declare that the cheque was given by the Petitioner only for the security purpose. Hence, the Respondents prayed for dismiss the petition.

4. Both sides no oral and documentary evidence produced and marked.

5. Both sides arguments heard.

6. The Point for consideration in this petition is that Whether this petition is deserved to be allowed or not ?

7. The Respondent / Plaintiff filed a suit for recovery of Money for a sum of Rs.12,45,000/- based upon the suit promissory note dated 24.01.2018 in favour of the Respondent / Plaintiff. The suit is ripe for trial. At this juncture the Petitioner / Defendant filed this application and submitted that the suit promissory note is rank forgery and fabricated document. To prove his contention it is necessary to send the disputed signatures of the petitioner / Defendant of the suit promissory along with the admitted signatures of the Petitioner/ Defendant to the Forensic Science Laboratory for comparison of disputed and admitted signatures of the petitioner / Defendant, for which seeking appointment of Commissioner to handover the disputed and admitted signatures of the Petitioner / Defendant contained in the documents to the FSL, Chennai.

8. The other side objection is that in order to protract the Proceedings and defraud the Respondent's lawful claim the Petitioner filed this petition with an intention to drag on the proceedings.

9. Considering the contention submitted by the both sides and on careful perusal of the written statement filed by the Petitioner / Defendant, he denied the execution of the suit promissory note and submitted that the suit promissory note is a forged and fabricated one. The other side objection is only formal. Hence, in the interest of justice to arrive the

correct conclusion in this suit and for giving fair opportunity to the Petitioner / Defendant, this petition is allowed with following conditions...

- i. Mr.R.Kandavel, MS.No.812/2007 Advocate appointed as a Court Commissioner and directed him to bring the disputed signatures contain in the suit pronote, and with admitted signatures of the Defendant with the sealed cover of this Court and handed over it to the concerned Forensic handwriting Expert, Chennai authority for comparison of the same and after the comparison the Commissioner has directed to receive the same from the Forensic Department and to handover before this Court in earlier time.
- ii. The commissioner remuneration is fixed Rs.12,000/-.
- iii. The Head Ministerial staff of this Court (Sherishtadar) directed to make necessary arrangements for the comparison of disputed and admitted signatures contained in the documents with affix Court specimen seal and duly packed with documents in a proper manner and affix a seal and comply the order properly and utilize the amount Rs.20,000/- to be deposited by the Petitioner / Defendant for obtained necessary demand draft for meet out the expenses of the Forensic department and also payment of the commissioner remuneration.
- iv. The Petitioner/ Defendant is directed to produce the admitted signatures of the Defendant contained documents in the relevant period of 24.01.2018 on or before 16.10.2023 before this Court and the Petitioner / Defendant directed to deposit for a sum of Rs.20,000/- before this Court to meet out the expenses of the advocate Commissioner fee and also the Forensic expert fees

regarding the comparison of the documents. The amount Rs.20,000/- to be deposited on or before 16.10.2023 before this Court.

- v. This petition will be allowed on production of the admitted signature of the Defendant containing documents in the relevant period of 24.01.2018 on or before 16.10.2023 before this Court and deposit the amount of Rs.20,000/- before this Court to meet out the expenses of the advocate Commissioner and also the Forensic expert fees regarding the comparison of the documents on or before 16.10.2023. Failing which this petition shall stand dismissed. Call on 17.10.2023.

IN THE RESULT:

This petition is allowed with following conditions:

- i. Mr.R.Kandavel, MS.No.812/2007 Advocate appointed as a Court Commissioner and directed him to bring the disputed signatures contain in the suit pronote, and with admitted signatures of the Defendant with the sealed cover of this Court and handed over it to the concerned Forensic handwriting Expert, Chennai authority for comparison of the same and after the comparison the Commissioner has directed to receive the same from the Forensic Department and to handover before this Court in earlier time.
- ii. The commissioner remuneration is fixed Rs.12,000/-.
- iii. The Head Ministerial staff of this Court (Sherishtadar) directed to make necessary arrangements for the comparison of disputed and admitted signatures contained in the documents with affix Court specimen seal and duly packed with documents in a proper manner

and affix a seal and comply the order properly and utilize the amount Rs.20,000/- to be deposited by the Petitioner / Defendant for obtained necessary demand draft for meet out the expenses of the Forensic department and also payment of the commissioner remuneration.

- iv. The Petitioner/ Defendant is directed to produce the admitted signatures of the Defendant contained documents in the relevant period of 24.01.2018 on or before 16.10.2023 before this Court and the Petitioner / Defendant directed to deposit for a sum of Rs.20,000/- before this Court to meet out the expenses of the advocate Commissioner fee and also the Forensic expert fees regarding the comparison of the documents. The amount Rs.20,000/- to be deposited on or before 16.10.2023 before this Court.
- v. This petition will be allowed on production of the admitted signature of the Defendant containing documents in the relevant period of 24.01.2018 on or before 16.10.2023 before this Court and deposit the amount of Rs.20,000/- before this Court to meet out the expenses of the advocate Commissioner and also the Forensic expert fees regarding the comparison of the documents on or before 16.10.2023. Failing which this petition shall stands dismissed. Call on 17.10.2023.

The order dictated to Steno-typist, transcribed by her, corrected and pronounced by me in the open Court, the 20th day of September 2023.

sd/-A.M.Ravi
II Additional District Judge,
Salem.

APPENDIX :

List of Petitioner side witnesses : NIL

List of Petitioner side Documents : NIL

List of Respondent side witnesses : NIL

List of Respondent side Documents : NIL

sd/-A.M.Ravi
II Additional District Judge,
Salem.