IN THE COURT OF ADDITIONAL DISTRICT JUDGE, VIRUDHUNAGAR

Present : **Tmt.S.K.ANGALAESWARI, B.A., B.L.,**
ADDITIONAL DISTRICT JUDGE,
VIRUDHUNAGAR.

Wednesday, the 30th day of July, 2025
I.A .No.06/2024 in
OS.No.19/2024

Meenavathy ... Petitioner/Defendant

Vs

Srinivasan ... Respondent/Plaintiff

This petition came up before me on 14.07.2025 for final hearing in the presence of Thiru.N.Surendhran, learned advocate for the Petitioner/Defendant and Thiru.P.Gengatharan, learned advocate for the Respondent/Plaintiff and upon hearing the arguments on both sides and having stood over for my consideration till this day, and this Court delivered the following:

ORDER

This petition is filed by the Petitioner/Defendant under Order 26 Rule 10 CPC , to appoint an advocate commissioner to Compare the signature on the promissory note with other signature samples, of the defendants should be produced before this court and get the expert opinion in respect the same.

2. **The averments of the Petition affidavit in brief are as follows**:

The petitioner is the defendant in the original case. The original suit has been filed against the petitioner/defendant by the respondent/plaintiff by producing forged documents with untrue facts. The signature on the promissory note filed by the respondent/plaintiff in the original suit is not her signature. The plaintiff has forged the signature and produced and filed the promissory note. She have never taken a loan of Rs.9,00,000/- from the respondent/plaintiff and she have not given any promissory note in support of the same. The first documentary evidence filed by the respondent/plaintiff in the course of the suit, the promissory note, is a forgery.

The petitioner/defendant came to know about it only when she appeared in court through her lawyer and filed a memo on 23.02.2024 seeking permission to inspect the documents in the court and obtained permission from the court and inspected the documents. She have filed a written statement on my behalf mentioning the above details. The onus is now on her to prove. The petitioner should prove her party in the suit, and the signatures on the promissory note filed by the defendant/plaintiff in the suit should be sent to handwriting experts to obtain a report and a court commissioner should be appointed to order them to file a report. Otherwise, She may suffer a lot of hardship and loss. There will also be a situation where the litigation case cannot be decided completely. Therefore this petition has been filed by the petitioner.

3) **The averments of counter affidavit filed by Respondent/Plaintiff in brief are as follows** :

The interlocutory application filed by the above petitioner/respondent is not maintainable in law and in law. The above interlocutory application is one that should be dismissed out of hand. The above interlocutory application is one that has been filed to delay the above original suit. The above petitioner/defendant can file the above interim petition only after all the evidence of the plaintiff in the above original case has been completed. The above petitioner is delaying the filing of the above petition with the ill intention of delaying the above original case. All the facts stated in paragraphs 2 to 5 of the affidavit filed by the above petitioner/defendant are blatant falsehood and fraud. In the counter-affidavit filed by the above petitioner/defendant, it has been stated that the respondent has forged the signature on the said promissory note by knowing the signature of the petitioner/defendant and further in paragraphs 7 to 10 of the said petitioner's counter-affidavit,The defendant and his , It is as if the family is openly admitting that they are committing fraud by taking loans from various people and not repaying the loan amount.

It is stated that there was a difference of opinion and quarrel between the daughter of the above petitioner/defendant and his son-in-law. Suresh Kumar and they were living separately, and that the above Suresh Kumar was running a paint shop in Kovilpatti and was making losses on 20.10.2023-6, and that he had gone into hiding after being arrested, and that Madhavan, Nammalwar. Saravanan, both from Kovilpatti, had come to the house of the defendant and had a dispute with the defendant's daughter, demanding a loan, and that she had separated from her husband and was living with her parents, and that the above persons had become angry with the above defendant's daughter and had produced promissory notes, and that a society case was filed in the court under the name of Sundararaj in O.S.No.18/2024.

The above mentioned arrangement of the daughter of the petitioner/respondent living separately from her husband is an arrangement made by the respondent and his family to cheat the people who gave the loan. Now in this original case, it was openly stated by the petitioner/respondent that the daughter of the petitioner/respondent cheated the petitioner and lived with her husband again. The above actions clearly show that the petitioner/respondent is ready to go to any extent to cheat the people. Her family also cheated the people who gave the loan. In fact, the petitioner/defendant has taken loans of about Rs. 50,00,000/- from various persons including this respondent/plaintiff on the basis of promissory notes. The said petitioner/defendant's son-in-law Suresh Kumar has taken loans of about seven crore rupees from various persons on the basis of promissory notes and cheques and has committed fraud. This plaintiff is also one of the persons who gave loans to the petitioner/defendant's son-in-law. The plaintiff has cheated by giving a loan of only Rs. 5,00,000/- and for that, a case of cheque fraud case S.T.C.No.4/2024 has been filed against the said Suresh Kumar in the Kovilpatti Judicial Magistrate Fast Track Court and is pending. Further, two cheque fraud cases C.C.No.372/2023, C.C.No.373/2023 for Rs.65,00,000/- have been filed by Sitharaman against the above Suresh Kumar in the Tambaram Judicial Department, Kanchipuram District and are pending.

In this situation, with the intention of defrauding the debtors, on 17.08.2023, the husband and son-in-law of the above petitioner/defendant together paid the loan of Rs. 40,00,000/- due to Kovilpatti ICICI Bank branch and transferred the properties from the name of the petitioner/defendant's son-in-law to the name of her daughter Sethuramathilagam through a settlement document on 23.08.2023. Subsequently, on the very next day i.e. on 24.08.2023, all the properties of her daughter Sethuramathilagam were transferred to the name of the petitioner/defendant by registering a settlement. The plaintiff, who was aware of the fraudulent activities of the petitioner/defendant and his family, like the plaintiff, also owed the petitioner/defendant a loan. Sundararaj also approached the above petitioner/defendant. When the loan amount was demanded back with interest, the petitioner/defendant and her husband assured that the said settlement documents were prepared to protect the properties from the creditors and that they would settle the debt by selling some of the valuable properties to the plaintiff and the said Sundararaj. Believing in the above promise, the plaintiff and the said Sundararaj waited patiently. His family and the petitioner/defendant tried to cheat this plaintiff and the said Sundararaj just as they cheated the lenders. Therefore, the plaintiff had no other option but to file a case in court. Even after filing the said original case, the said petitioner/defendant and her husband directly contacted the said plaintiff and the said Sundararaj and requested them to pay the amount as soon as possible and withdraw the case. The plaintiff stated that they were ready to withdraw the case if the amount was returned. The plaintiff has come to know from this slip that the petitioner/defendant, who had been delaying by saying that he could only pay a small amount without paying the entire loan balance, is now illegally disposing of the properties in a fraudulent manner with his family. Therefore, the said interim petition of the petitioner/defendant seeking to have the claim examined by a certified signature expert is also a fraudulent act of delaying. The above petitioner/respondent and his family have various loan needs as per the documents.In the petition, the petitioner/defendant has fraudulently stated that there is no need to take out a loan.

The above petitioner/defendant has not stated in the above interim petition the documents with which he has filed the above petition for comparison. For the above reason, the above interim petition is not maintainable. The signatures in the original case promissory note document can only be compared with the signatures in the public documents created during the period 06.11.2022. No such document has been filed in the court by the petitioner/defendant. Moreover, the report of the handwriting expert is merely an opinion. It is not always reliable evidence. Therefore, the examination and report of the handwriting expert are not necessary for this case. Therefore, the above interim petition filed by the petitioner/defendant is frivolous. Therefore, this petition should be dismissed with the costs of the respondent/plaintiff.

4. **Point for consideration**:

Whether this petition is to be allowed or not?

5. **Points** :

i. Heard both side arguments. Petition affidavit and counter affidavit filed by petitioner and respondent and also records available in this case were perused.

ii. For the sake of convenience the parties are arrayed as per their rank in the suit.

It is the case of the defendant that this suit has been filed by plaintiff with concocted story and forged a suit promissory note and also by forging the signature of her. Further she contended that she never borrowed a sum of Rs.9,00,000/- at any point of time from the plaintiff. Moreover she appeared and filing her vakalat before this court on 23.02.2024 and thereafter only she know the fact that her signature was forged in the alleged promissory note. Therefore she requested before this court her disputed signature found in alleged promissory note with her admitted signature by a Handwriting expert and the comparison of the same would clearly prove that the disputed signature has been forged by the plaintiff. Hence she prayed before this court to appoint an advocate commissioner to get the report from forensic science department.

On contrary to the above said submission the contention of the plaintiff that the above application filed by defendant is only to prolong the proceedings. Moreover the above said application was filed when the evidence of plaintiff side get over. Further there were many cases pending against the above defendant, the list are (i) a suit in OS No.18 of 2024 (ii) CC No.372 of 2023, CC No.373/2023 before Judicial Magistrate Tambaram, (iii) STC No.04 of 2024 before Fast Track Court, Kovilpatti. Furthermore there was the contention of the plaintiff that the advocate commissioner's report is only a mere opinion. Therefore the above application is not maintainable in the eye of law.

Before going to the merit of this application it is useful to extract the law namely Order XXVI Rule 10 r/w. Section 151 of CPC hereunder:

10. Procedure of Commissioner – (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit – The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Commissioner may be examined in person – Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

At this juncture it is relevant to relied upon a following citation for better appreciation

S.Chinnathai vs. K.C.Chinnadurai before Our Hon'ble Madurai Bench of Madras High Court reported in C.R.P.No.57 of 2008 and M.P. (MD) No.1 of 2008 in Paragraph Nos.3, 4, 6, 18 held that,

"3....... A reading of the said provision would show that if a scientific investigation is required to be conducted in a suit for deciding the dispute between the parties and if in the opinion of the Court, if such investigation cannot be done before the Court, then the concerned court may issue a Commission to such person directing him to address such questions and get a report to the Court. Therefore, a specific power is conferred on the Court under Order 26 Rule 10A of the Civil Procedure Code to conduct scientific investigation for the purpose of deciding the case. In order to conduct such specific investigation, the Court has also got a power to appoint a Commissioner as indicated under Rule 10(2) of the Civil Procedure Code.

4. The word scientific investigation would also include sending the documents to a Forensic Expert in order to find out the truth or otherwise, as to whether a party to a suit has in fact signed the disputed document or not. Hence, the power is conferred under order 26 Rule 10A of the Civil Procedure Code to the Court to send a document to be compared with other admitted documents and get a report from the Forensic Expert.

6. The Civil Court has no doubt, got the powers under Section 73 of the Indian Evidence Act to compare the signatures made in a disputed documents with the admitted documents. The said power of the civil Court would be used sparingly and the Court below will have to give specific reasons while giving findings based upon that. However, the civil Court in all probability shall avoid such comparison, since it is always desirable to make the comparison with naked eyes instead of having access to an expert's opinion.

7. Prior to the introduction of Act 104 of 1976, by which, Order 26 Rule 10A of the Civil Procedure Code has been introduced the power was still available with the Court under Section 45 of the Indian Evidence Act. However, Order 26 Rule 10A of the Civil Procedure Code specifically clothe the Civil Court with a power to do scientific investigation which includes the power to send the document to an expert warranting a report. In view of the said power, the Civil Court will have to exercise the same, if in the opinion of the civil Court that the evidence of the Forensic Expert is very much necessary for deciding the dispute between the parties. In such an event, the Civil Court instead of invoking its power under Section 73 of the Indian Evidence Act shall *have to exercise its power under Order 26 Rule 10A of the Civil Procedure Code.*

18. However, on a consideration of the above said legal position, the following principles emerge for consideration:

1. The civil Court is having jurisdiction to send the document to the Forensic Expert for comparing the signatures between the disputed documents with the admitted documents by appointing a Commissioner and get a report.

2. When the civil Court is exercising its power under Section 73 of the Indian Evidence Act, the civil Court will have to exercise its power under Order 26 Rule 10A of the Civil Procedure Code instead of invoking Section 73 of the Indian Evidence Act.

3. The Advocate Commissioner, being an officer of the Court can be asked to take the original document.

4. When the Advocate Commissioner takes the original document, then a certified copy of the same will have to be kept under the custody of the Court.

5. The civil Court cannot direct the disputed document to be compared with the vakalat or written statement of a party.

6. When the civil Court comes to the conclusion that the power under Order 26 Rule 10A of the Civil Procedure Code should be invoked, then the civil Court shall invoke the same even without an application from the parties concerned in the interest of justice and in order to solve the dispute between the parties.

7. When a document is sent to an expert it should be sent only to the Government Department Expert and not to a private Expert. While *sending a document to an expert, the original of the same has to be sent since it is not possible to compare the xerox copies with the other admitted documents.*

8. The civil Court shall not dismiss an application seeking for the examination of the document by an expert on the ground of wrong quoting of provision of law and in such a case, the Court shall exercise under Order 26 Rule 10A of the Civil Procedure Code.

9. The civil Court shall exercise under Order 26 Rule 10A of the Civil Procedure Code even when a prayer is sought for a direction to summon the expert to the Court for the purpose of examining the document.

10. An application filed under Order 26 Rule 10A of the Civil Procedure Code will have to be filed at the earliest opportunity in the normal circumstances.

11. However, an application under Order 26 Rule 10A of the Civil Procedure Code cannot be dismissed merely on the question of delay alone, unless the same is willful and deliberate.....”

In the light of the above said argument this court finds that in cantana of decisions Our Hon’ble High Court and Supreme Court held that, Order 26 Rule 10 CPC provides for appointment of Commissioner for forensic investigation. When a forensic investigation is required to be conducted in a suit for deciding the dispute between the parties and if the Court decides that the same cannot be done before the Court, it is open to the Court to issue a Commission to such expert to investigate and furnish a report. In order to conduct such specific investigation, the Court has also got power to appoint a Commissioner under Rule 10 of the Civil Procedure Code. As the scientific investigation contemplated in Order 26 Rule 10 CPC includes report of the Forensic Expert, the Court can appoint a Commissioner / Advocate Commissioner to send the documents to be compared with the other admitted documents and get a report from the Forensic Expert. The Advocate Commissioner, who is an Officer of the Court, has to be given the responsibility of taking the document to an expert and collecting them back from the expert and submit a report to the Court. An Advocate Commissioner appointed by the Court is an Officer of the Court and giving the same to the Commissioner for the said purpose is deemed to be in the custody of the Court only.

Considering the overall facts and also in view of the above said observation this court finds that the above said petition was resisted by the plaintiff and his main contention is that the above petition was filed after plaintiff side evidence is over in the suit. Eventhough plaintiff objected the above said application the defendants strongly denied the genuineness of Promissory Note. According to them Promissory Note is not a genuine one.

At this juncture this court finds that the suit laid on the strength of Promissory Note as such the above petition is eschewed would patently be hit defendants case. Therefore this court accept that matters that are better dealt with by experts ought not to be taken over by the court. After carefully considered the rival submissions and went through the evidence on record this court finds that the execution of Promissory Note is in dispute the contention of defendants in the above application is not to be taken in lighter way.

Moreover as per Section 104 of Bharatiya Sakshya Adhiniyam, 2023 / Section 101 of the Indian Evidence Act, 1872 - Whoever desires any Court to give judgment as to any legal right or liablity dependent on the existence of facts which he asserts must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

In view of the above said section once the plaintiff let evidence then automatically the onus will shift upon the defendants. In the case on hand the defendants have not discharged the said onus. If that be so the above application is maintainable. As such this court hold the for sending the Pronote to Forensic Science Department is necessary to this facts and circumstances of this case.

In the result, Advocate A.Dhanalakshmi has been appointed as Advocate Commissioner is renumeration is fixed at Rs.10,000/-. The petitioner is directed to deposit the commissioner fees into court on or before 18.08.2025 and has to submit the proof of deposit of commissioner fees into court and the commissioner is directed for submitting the questioning document promissory note dated 06.11.2022 along with the admitted Document in only the marked signature should be verified viz., Sale deed dated 22.10.2021 before the Tamil Nadu Forensic and Science Laboratories, Madurai and get the expert opinion in respect of the same. Report call on 29.08.2025.

Dictated to the steno-typist, directly typed by her in the computer, corrected and pronounced by me in open court, on this the 30th day of July, 2025.

ANGALAESWARI Digitally signed by ANGALAESWARI

Additional District Judge,
Virudhunagar.

Witness on the side of the Petitioner: Nil.

Exhibits on the side of the Petitioner:

Ex.P1 - Copy of Encumbrance Certificate

Witness and Exhibits on the side of the Respondent: Nil.

ANGALAESWARI Digitally signed by ANGALAESWARI

Additional District Judge,
Virudhunagar.