

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, VIRUDHUNAGAR

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

Monday, the 27th day of October, 2025

I.A.No.03/2024 in
OS.No.223/2022

Maheswari

... Petitioner/Defendant

Vs

V.S.Pandiyan

... Respondent/Plaintiff

This petition came up before me on 14.10.2025 for final hearing in the presence of Thiru.M.Selvam, learned advocate for the Petitioner/Defendant and Thiru.M.Manoharan, 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 10A and section 151 of CPC, to appoint an advocate commissioner to compare the disputed signature on Ex.A1 - Pronote dated 22.06.2021 filed by the plaintiff with the admitted signature in the Sale Deed dated 24.06.2021 Document No.3444/2021 executed to petitioner/defendant by P.Kalimuthu in the capacity of Power Agent through Forensic science and obtain the expert opinion in respect of the same.

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

The petitioner is the Defendenat in the original suit. The plaintiff has filed a suit alleging that the petitioner have taken a loan of Rs.16,00,000/- on 22.06.2021 against a promissory note. He have not taken any loan from the plaintiff and the

plaintiff has fraudulently forged his signature and filed this suit and he has filing a Written Statement. The above case is now posted for trial and the plaintiff has been examined as PW1 and Muthupandiyan has examined as PW2 and the suit was adjourned for trial on 14.11.2024 on behalf of him. He stated that in para 4 and para 7 of the Written Statement that the promissory note was fabricated with the intention of committing fraud, the plaintiff has filed a suit by fraudulently producing the pronote. Therefore, it is his legal duty to prove in the court of law that the signature on the Ex.A1 - Pronote dated 22.06.2021 is not him and was forged. While the plaintiff claims that he has written the Ex.A1- Pro-note on 22.06.2021, P. Kalimuthu, acting as the Power Agent, has written a deed to him vide Document No. 3444/2021 dated 24.06.2021 and registered it in the Virudhunagar Sub-Registrar's office. He have produced the above original document herewith. It is necessary and proper that the court appoints an advocate to compare and examine the signatures in the above document No. 3444/2021 with the signatures in the Ex.A1- pronote dated 22.06.2021 and obtain a report. Failure to do so may result in a lot of suffering and irreparable loss to him. Hence this petition has been filed by the petitioner.

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

Apart from the facts admitted herein, the following are strongly objected to the Respondent/Plaintiff. The details stated in para 2 of the affidavit filed by the Respondent along with the petition are strongly objected to by the Respondent/Plaintiff. In it, he has stated that he has not taken any loan from the Plaintiff and there is no need to take any loan and that the Plaintiff has forged his signature fraudulently and filed this pro-note case and he has only stated in para 7 of the written statement that he has produced the pro-note. Further, the Plaintiff has not stated anywhere in the written statement that he has forged his signature and therefore the petition is not necessary for this case. He has also stated in that

paragraph that he has examined the Plaintiff as PW1 and V.S.Pandiyan examined as PW2. But both of them have the same plaintiff, V.S. Pandian. From this it will be seen that the petitioner/defendant has filed the petition with the intention of delaying the litigation and wasting the precious time of the court.

Further, the petitioner has also stated in para 4 of the affidavit filed by the respondent that the signature on the Sale deed dated 02.07.2021 should be compared along with the signature on the EX.AI. In fact, there is no connection between the date and the document number as seen in the affidavit filed with the petition by the respondent/plaintiff. Even though the petitioner/defendant has made corrections in the original petition, the copy given to the respondent/plaintiff has not been corrected. Furthermore, if the court wants to compare the signature on the documents with the EX.A1 signature of the petitioner/defendant, it can only compare the signature on the document before the EX.A1 date of 21.06.2021 because there is a hundred percent chance that after signing the pronote, his signature will be changed in the subsequent documents. Therefore, it is not possible to compare his signature with the document dated after the EX.A1- pronote.

Further, the suit was filed in December 2022. The defendant appeared through his lawyer and filed a written statement on 19.04.2023. After that, on the side of plaintiff, the respondent/plaintiff was examined as PW1 and the petitioner/defendant was cross-examined and one Muthukrishnan was examined as PW2 and he was also cross-examined by the petitioner/defendant and he also gave evidence in favor of the respondent/plaintiff. After the respondent/plaintiff's testimony was concluded and petitioner/defendant was put for evidence, the petitioner filed the petition out of time. In fact, if he had a real counter-case, he would have filed a petition to compare the signatures when he filed the written statement. The petitioner/defendant has filed the suit after about 18 months with the intention of wasting the valuable time of the court. The petitioner/defendant has no prima facie for filing the petition. The prima

facie of the petition stated in the petition is also produced for the petition. The respondent/plaintiff hereby reserves the right to file additional counter-statements as and when additional details are received. Hence this petition liable to dismiss with reasonable 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.

5.1) It is the case of the defendant that this suit has been filed by the 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.16,00,000/- at any point of time from the plaintiff. Moreover she appeared and filing her written statement before this court 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.

5.2) 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. 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.

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

10-A. Commission for scientific investigation. - (1) Where an question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thins fit, directing him to inquire into such question and report thereon to the court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation o commissioner appointed under this rule as they apply in relation to a Commissioner appointed under Rule.9.

5.4) 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.....”

5.5) 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 10A CPC provides for appointment of Commissioner for scientific investigation. When a scientific 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 A of the Civil Procedure Code. As the scientific investigation contemplated in Order 26 Rule 10A 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.

5.6) 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 two years of filing of the suit. Eventhough plaintiff objected the above said application the defendants strongly denied the genuineness of Ex.A1 - Promissory Note. According to them Ex.A1 is not a genuine one.

5.7) At this juncture this court finds that the suit laid on the strength of Ex.A1 - 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 Ex.A1 - Promissory Note is in dispute the contention of defendants in the above application is not to be taken in lighter way.

5.8) 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 liability 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.

5.9) 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 the fact like so the above application is maintainable. As such this court hold the for sending the Ex.A1 – Pronote to Forensic Science Department is necessary to this facts and circumstances of this case.

5.10) In the result, Advocate V.Durga, B.A.B.L., has been appointed as Advocate Commissioner and her remuneration is fixed at Rs.10,000/-. The petitioner is directed to pay the commissioner fees directly to commissioner on or before 17.11.2025 and has to submit the proof of deposit of commissioner fees before this court and the commissioner is directed to submitting the disputed document viz promissory note dated 22.06.2021 which is marked as Ex.A1 in O.S.No.223 of 2022 along with the admitted Document viz., copy of Bank Account details of petitioner before the Tamil Nadu Forensic and Science Laboratories, Madurai and get the expert opinion in respect of the same. Report call on 17.12.2025.

Dictated to the steno-typist, directly typed by her in the computer, corrected and pronounced by me in open court, on this the 27th day of October, 2025.

Additional District Judge,
Virudhunagar.

I.A.No.03 of 2024 in O.S.No.223/2022
Date : 27.10.2025

Additional District Court
Virudhunagar

Witness on the side of the Petitioner:
PW1 – Aanandhasekar (Bank Manager)

Exhibits on the side of the Petitioner:

Ex.P1 - Copy of Bank Particulars of petitioner

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

Additional District Judge,
Virudhunagar.