

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 29.08.2025

Order pronounced on : 12.09.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.2664 of 2025
& CMP.No.15054 of 2025

K.Mohammed Khaleemuddin

..Petitioner

Vs.

1.Gowher Sultana

Kirudeen (Died)

K.Mohammed Yacoob (Died)

2.Takira Bi

..Respondents

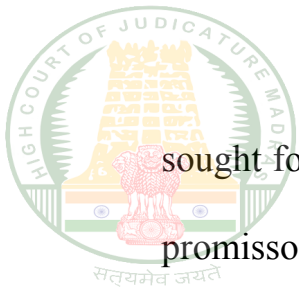
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 16.08.2024 passed in I.A.No.9342 of 2018 in O.S.No.5898 of 2016 on the file of the XIV Assistant City Civil Court, Chennai.

For Petitioner : Mr.M.Marudhachalam

For Respondents : No appearance

ORDER

The 2nd defendant in the suit is the revision petitioner, challenging dismissal of I.A.No.9342 of 2018, in and by which, the revision petitioner

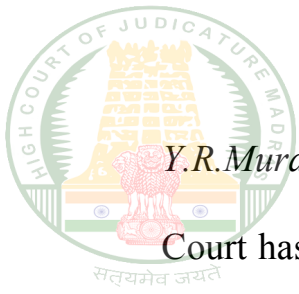


sought for sending disputed undertaking document for comparison with the suit promissory note.

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2.I have heard Mr.N.Marudhachalam, learned counsel for the petitioner. Despite service of notice, the contesting 1st respondent has not chosen to appear in the revision. The learned counsel for the petitioner states that the 2nd respondent is not a necessary party in the revision and he gives up the 2nd respondent. The same is recorded.

3.According to the learned counsel for the petitioner, the petitioner, who is the 2nd defendant in the suit has admitted the signature in the suit promissory note, but however, the execution of undertaking document is denied and in order to establish the same alone, the application was taken out under Section 45 of the Indian Evidence Act. He would further state that when the revision petitioner had categorically denied the signatures as fraudulent, the Trial Court ought to have given an opportunity to enable the petitioner to establish his contention of forgery. He would also state that no prejudice would be caused to the plaintiff/1st respondent, if the expert gives his opinion with regard to the admitted signature as well as the disputed signature. He would also place reliance on the decision of the Hon'ble Supreme Court in *T.Nagappa Vs.*



Y.R.Muralidhar, reported in 2008 5 SCC 633, where the Hon'ble Supreme Court has held that it is better to send the signatures in the disputed cheque for expert opinion. He would therefore pray for the revision being allowed.

4.I have carefully considered the submissions advanced by the learned counsel for the petitioner.

5.The promissory note is dated 04.07.2009. The undertaking affidavit is dated 16.02.2010. Therefore, with regard to the above documents, one being admitted and the other being disputed, the documents are contemporaneous, having been executed about one year apart. According to the learned counsel for the petitioner, the undertaking affidavit executed by the plaintiff clearly evidences the fact that she has already given up all her right in the suit property and therefore, she cannot claim a right of partition. It is only under such circumstances that the comparison of the signatures of the plaintiff in Ex.B1 and Ex.B3 have been sought for.

6.The suit is for partition and separate possession and in the written statement filed by the revision petitioner, it is specifically pleaded about the unregistered undertaking executed by the plaintiff in favour of the defendants 1



to 3. However, the plaintiff has denied having executed such undertaking. The Trial Court has dismissed the application only on the ground that the application has been taken out belatedly. Delay in all cases cannot be put against the parties. It is the case of the plaintiff that she is entitled to partition and separate possession. The defence raised by the revision petitioner is that the plaintiff has already released her rights for consideration and therefore, the suit itself is not maintainable.

7.The disputed document is also marked as an exhibit during cross-examination of P.W.1. Therefore, in the interest of justice, it would be desirable for the Court to get the expert's opinion on the signatures in the said undertaking deed. Admittedly, Ex.B1-promissory note has been executed by the plaintiff herself and both the documents being contemporaneous, it is always possible to get the assistance of an expert with regard to the disputed signatures in the undertaking deed. I do not see how the plaintiff would be put to any serious prejudice, especially when she has denied the execution of the said undertaking deed.

8.It is also the specific case of the petitioner that these documents were marked only in cross-examination and the plaintiff has suppressed the factum



of having released her share in the suit property. For all the foregoing reasons, I am inclined to allow the revision.

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9. In fine, the Civil Revision Petition is allowed and the order dated in I.A.No.9342 of 2018 in O.S.No.5898 of 2016 on the file of the XIV Assistant City Civil Court, Chennai, is set aside. The disputed undertaking deed, marked as Ex.B3, shall be sent for comparison, along with the admitted signature of the plaintiff in Ex.B1, promissory note, to the forensic/handwriting expert. The forensic/handwriting expert shall give a report regarding the signatures in the disputed undertaking deed on comparison with the admitted signature in the promissory note. Such exercise shall be carried out within a period of two months from the date of receipt of a copy of this order. Considering that the suit is of the year 2018, I direct the trial Court to dispose of O.S.No.5898 of 2016 on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Connected Civil Miscellaneous Petition, if any, is closed.

12.09.2025

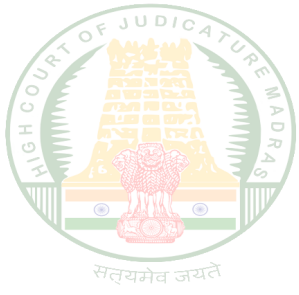
Speaking/Non-speaking order

Index : Yes/No

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To

The III Additional District Judge, Coimbatore.



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P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.2664 of 2025
& CMP.No.15054 of 2025

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