

Sampath Vs. Karthikeyan

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Court : Chennai

Decided On : Sep-20-1996

Reported in : 1996(2)CTC758; (1997)IMLJ129

Judge : N.V. Balasubramanian, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 16, Rule 6

Appeal No. : C.R.P. No. 1823 of 1996

Appellant : Sampath

Respondent : Karthikeyan

Advocate for Pet/Ap. : P. Mani, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

N.V. Balasubramanian, J.

1. The civil revision petitioner is the fourth defendant in the suit. The respondent herein is one of the plaintiffs. The first plaintiff filed the suit against the defendants for the recovery of money on the basis of a promissory note dated 17.2.1990 executed by the defendants. Subsequent to the filing of the suit, the first plaintiff

died and his legal representatives were brought on record as plaintiffs 2 to 5. The second plaintiff filed an application before the lower Court to call for the pay bill and the acquittance register for the year 1990 maintained in the Taluk Office, Cheyyar relating to the fourth defendant. The application was filed on the ground that the fourth defendant has denied the execution of the promissory note and in the written statement filed by him, he has stated that the promissory note was manipulated. The second plaintiff in the affidavit filed before the lower Court has stated that whereabouts of the attestors to the suit promissory note are not known and are not available. The case of the plaintiff before the lower Court was that inspite of his best efforts, he was not able to trace the attestors and in those circumstances, it was prayed that to compare the signature of the fourth defendant, the Court should summon the records, the pay bill and the acquittance register for the year 1990 maintained by the Taluk Office, Cheyyar. The revision petitioner who is the respondent in the application has filed a counter-affidavit to the effect that the averment that the scribe and the attestors of the promissory note are not available is not correct and it is the duty of the plaintiff to examine the hand-writing expert and to prove the signature of the fourth -respondent. The case of the revision petitioner before the lower Court is that instead of examining the hand-writing expert, it is not open to the second plaintiff to file an application to call for the records from the Taluk Office, Cheyyar. The lower Court considered the averments made in the affidavit and the counter-affidavit and held that in the interest of justice it is necessary to call for the records from the Taluk Office, Cheyyar so that the signature of the fourth defendant found therein can be compared with the signature found in the suit promissory note and after comparison, it can be sent to the hand-writing expert to find out whether the revision petitioner has signed the suit promissory note or not. It is this order which is the subject matter of challenge in the revision petition.

2. Learned counsel for the revision petitioner contended that the lower Court ought not to have called for the records for comparison of the signature and the execution of the pronote can be proved independently with the help of attestors. Learned counsel for the petitioner also contended that the attestors are readily available and when the averment that the attestors are not available is denied by the revision petitioner, the lower Court should have considered the objections of

the revision petitioner and without considering the same, the lower Court erred in ordering the production of the records from the Taluk Office, Cheyyar.

3. Even though the respondent was served, there was no representation on behalf of the respondent. I am of the view, the purpose of any trial is to find out the truth. The lower Court with a view to find out whether the signature of the fourth defendant found in the suit promissory note is that of the fourth defendant or not, has exercised its judicial discretion in summoning the records from Taluk Office, Cheyyar. The object of allowing the application is to find out whether the fourth defendant has really signed the promissory note or not. According to the lower Court, if that record is produced before the Court, it would be easy for the Court to compare the signature of the fourth defendant found in the promissory note with the signature found in the acquittance register of the year 1990. The fact that the Court has called for the acquittance register of the year 1990 shows that the Court intended to see the similarity in the signature of the fourth defendant of the year 1990 between the records and the suit promissory note and the records of the year 1990 summoned are also of same significance as the promissory note is dated 17.2.1990. The lower Court exercised its discretion in the interest of justice and with a view to find out the truth of the denial of the fourth defendant in the suit. The questions whether the document should be summoned or not; whether the document would be relevant or not are for the trial Court to consider and decide, and when the Court has decided the same in the exercise of judicial discretion to summon the records, there is nothing much left for the Revisional Court to interfere. The second plaintiff before the lower Court has categorically stated in the affidavit that the attestors are not available and in spite of his best efforts, he was not able to trace the attestors. Though the fourth defendant has denied the averments in the counter-affidavit filed by him, he has not given the particulars with regard to the address or whereabouts of the attestors, so that it may be possible for the plaintiffs to summon the attestors, or examine the attestors. Equally, if, according to the revision petitioner, the attestors are available he can summon the attestors and examine them to prove his case. The bare denial of the revision petitioner would not be sufficient and the lower Court was justified in relying upon the statement of the second plaintiff that in spite of his best efforts he was not able to trace the attestors. The lower Court exercised its discretion

properly in summoning the records from the Taluk Office, Cheyyar. I, therefore, hold that the lower Court was right in its reasoning that it is a fit case for the exercise of its discretion in ordering the summoning of the documents. Accordingly the revision petition is dismissed. There will be no order as to costs.

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