
(2001) 04 MAD CK 0104

In the Madras High Court

Case No : C.R.P. No. 3298 of 2000 and C.M.P. No. 17369 of 2000

R.M. Natarajan Chettiar

APPELLANT

Vs

Sahul Hameed and Annammal

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115(i)(a)(b), 2(2), 47

Evidence Act, 1872 — Section 73

Negotiable Instruments Act, 1881 (NI) — Section 118

Citation : (2001) 04 MAD CK 0104

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : G. Rajagoopal, for M/s. Sundaresan S. Francis Ashok, for the Appellant; S. Gopalrathnam, for Mr. S. Vijaykumar for R 2, for the Respondent

Judgement

N.V. Balasubramanian, J.—The Civil Revision Petition is directed against the order passed by the Learned Subordinate Judge, Pattukkottai in I.A. No. 241 of 2000 in O.S. No. 78 of 1998 dated 26.9.2000. Learned Subordinate Judge by the Order impugned rejected the request of the revision petitioner, the plaintiff in the suit to reopen the suit and to permit the plaintiff to produce expert opinion on the signatures of the defendants found in the suit promissory note and also to lead evidence of the handwriting expert.

2. The suit was filed for recovery of a sum of Rs. 1,26,000/- with future interest and for costs on the basis of a promissory note alleged to have been executed on 22.4.1997 by defendants 1 and 2. The suit was instituted on 23.2.1998. It is stated in the plaint that the defendants had paid a sum of Rs. 4,000/- on 5.1.1998 and thereafter they have not paid any amount to discharge the debt due under the promissory note.

3. The defendants, in the written statement filed on 23.4.1999, have stated that they have not executed the suit promissory note and the signatures found in the promissory note are forged ones. The case of the defendants, inter alia, is that

the second defendant conveyed a portion of her property to the plaintiff under a deed of sale dated 25.2.1998 for valid consideration and if the case of the plaintiff is true, the plaintiff would have adjusted the money due under the suit promissory note from the sale consideration to be paid, but the entire sale consideration was paid by the plaintiff. However, it is not necessary to go into the merits of the matter here.

4. The trial court framed four issues for consideration. In the trial of the suit, the evidence commenced on 9.3.2000 and the evidence on plaintiff's side was closed on 9.3.2000. On behalf of the defendants, the second defendant was examined as D.W.1 on 19.3.2000 and the evidence was closed on 10.4.2000. Then, the case was posted for arguments. It seems that on 16.4.2000, an application was filed by the plaintiff to reopen the case and to summon the records from the office of the sub-registrar and that application was rejected by the trial court on 18.8.2000. Then on 23.8.2000 the plaintiff filed the application seeking permission of the Court to lead expert evidence. The trial Court, by the impugned order, rejected the application on the ground that the Court is vested with the power u/s 73 of the Indian Evidence Act to compare the signatures, and the application was filed after the examination of witnesses on both sides was over and the trial court was of the view that the application was filed to delay the trial of the suit. It is against this order, the present Civil Revision Petition has been filed.

5. Heard Mr. G. Rajagopal, learned senior counsel appearing for the petitioner and Mr. S. Gopalratnam, learned senior counsel appearing for the respondents. During the course of arguments, one of the issues that arose for consideration was regarding the maintainability of the revision petition in view of the decisions of this Court in Ramaiah Thevar, C.L. v. P.C. Balarama Raja (2000 (IV) CTC 201) and Subbian v. Sivakumar (2000 (IV) CTC 205). Mr. G. Rajagopal, learned senior counsel submitted that the revision is maintainable. He referred to the Statement of Objects for the CPC (Amendment Act 1/1976), and also referred to the following decisions and submitted that the Civil Revision is maintainable in law:

1. Major S.S. Khanna Vs. Brig. F.J. Dillon,
2. Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others,
3. Kadiyala Rama Rao Vs. Gutala Kahna Rao (Dead) By Lrs. and Others,
4. Narasimha Rao v. Someswar Joshi (1956 11 MLJ 399).
5. Marappa Gounder and Others Vs. Sellappa Gounder and Others,
6. T.M. Natarajan Vs. Subbaraya Mudaliar and Another,
7. V.P. Padmanabhan Nair and Others Vs. Grasim Industries, Mavoor and Others,
8. Madhusudan Hazra Vs. Amal Hazra,

9. M/s. Skylark Motors (India) and others Vs. Lakshim Commercial Bank Ltd.,

6. Learned senior counsel submitted that the decision of this Court in Ramaiah Thevar's case (2000 (IV) CTC 201) is distinguishable on the facts of the case. He also submitted that the Kerala High Court in the decision in V.P. Padmanabhan Nair and Others Vs. Grasim Industries, Mavoor and Others, has taken a view different from the one taken in Erinhikkal Parammal Ravindran Vs. K. Roja and Others, . He therefore submitted that the decision rendered in Ramaiah Thevar's case (2000 (IV) CTC 201) over looking the decision of this Court in the case of Pormusamy Pandaram Vs. The Salem Vaiyappamalai Jangamar Sangam, cannot be regarded as a good law. Learned counsel also referred to the decisions of this court in G. Narasimha Rao Vs. Someswar Joshi, and in T.M. Natarajan Vs. Subbaraya Mudaliar and Another, and submitted that when this Court finds that the order of subordinate court is illegal and without jurisdiction, this Court has the power to interfere with the order. Learned senior counsel also submitted that the learned Subordinate Judge has not exercised his discretion properly and only after D.W. 1 in his evidence has spoken that the promissory note was not executed by the defendants, the burden of proof shifted to the plaintiff and immediately thereafter, the plaintiff took steps to call for certain documents in the custody of the sub-registrar so that the admitted signatures of the defendants could be compared with the signatures found in the suit promissory note and when that application was rejected, the plaintiff filed the application seeking permission to lead the evidence of handwriting expert. Learned senior counsel also submitted that u/s 118 of the Negotiable instruments Act, the burden shifted to the plaintiff when the second defendant in her evidence has denied the signature in the suit promissory note and though the Court has the power to compare the signatures, the practice of comparison of signatures by the Court is not very much appreciated. Learned senior counsel therefore submitted that the learned subordinate judge overlooked the fact that it is an application filed by the plaintiff and the plaintiff would gain nothing by delaying the trial of the suit.

7. Mr. S. Gopalratnam, learned senior counsel appearing for the respondents is not seriously disputing the question that the C.R.P. is maintainable. Learned senior counsel gave an additional reason. He referred to section 47 of the CPC and the definition of the expression, "decree" in section 2(2) of the CPC and submitted that after the amendment in 1976, the order passed u/s 47, CPC is not appealable and by the same Amendment Act, section 115 of the Code has been amended enlarging the scope of revision and the probable reason for widening the scope of section 115 of the Code is to enable the party aggrieved by an order passed u/s 47 of the CPC to approach the Court by way of revision when the appeal against the order passed u/s 47 is not available. Learned senior counsel submitted that the plaintiff has filed the suit without any prior notice and the defendants, in the first available opportunity, denied their signatures in the suit promissory note in the written statement stating that the suit promissory note is a forged document. Learned senior counsel submitted that the plaintiff

was alerted about the stand of the defendants and in spite of the same, the plaintiff kept quiet by not taking any steps to examine the expert evidence and when the steps taken by the plaintiff to call for certain records from the Office of the Sub-Registrar became abortive, the Plaintiff has filed the present application. Learned senior counsel submitted that Plaintiff has filed the suit without any prior notice and the defendants, in the first available opportunity, denied their signatures in the suit promissory note in the written statement stating that the suit promissory note is a forged document. Learned senior counsel submitted that the plaintiff was alerted about the stand of the defendants and in spite of the same, the plaintiff kept quiet by not taking any steps to examine the expert evidence and when the steps taken by the plaintiff to call for certain records from the Office of the Sub-Registrar became abortive, the plaintiff has filed the present application. Learned senior counsel submitted that the learned Subordinate Judge has taken into account all the relevant facts and then dismissed the application to reopen the case and to examine the handwriting expert. Learned senior counsel, in this connection, relied upon the following decisions:

1. Ramchand Vs. Laxmikumar,
2. Prem Narain Vs. Sanjay Purwar and others,
3. Erinhikkal Parammal Ravindran Vs. K. Roja and Others,
4. Surjan Singh Vs. Paras Ram (deceased by L.R.'s) and others,
5. Ramaiah Thevar, C.L. v. PC. Balarama Raja (2000 (IV) CTC 201;
6. Subbian Vs. Siva Kumar,

8. As far as the question whether the Civil Revision Petition is maintainable against the order of the trial court rejecting the application for sending the suit document for examination by handwriting expert is concerned, no doubt, S.S. Subramani, J. in Ramaiah Thevar 's case (2000 (IV) CTC 201) has taken a view that civil revision petition is not maintainable against the order as the order has not decided any right or obligation of the parties concerned. K. Raviraja Pandian, J. in Subbian Vs. Siva Kumar, has followed the decision in Ramaiah Thevar's case and held that when the order impugned does not adjudicate some rights or obligations of the parties, the civil revision petition does not lie. K. Raviraja Pandian, J. was dealing with a case where the Court permitted the party to give evidence at later stage in the execution proceedings, and the learned Judge held that the order impugned is not a case decided within the meaning of section 115 of the CPC and hence, the Civil Revision Petition does not lie.

9. I am of the view that the question whether the Civil Revision Petition would lie against an order impugned would depend upon the facts of that case. K. Sampath, J. in Roman Catholic Church v. Mariarulappan (2001 (I) CTC 742) considered the expression, "case decided" in section 115 of the Code of Civil Procedure. In the case before K. Sampath, J., the defendant therein filed an

interlocutory application for production of books containing certain documents from the office of the sub-Registrar and the trial court dismissed the said application, in the factual situation, the learned judge held that the civil revision petition is maintainable. Learned Judge discussed various case-laws including the decision of S.S. Subramani, J. in Ramaiah Thevars case (2000 (IV) CTC 201) and the decision of Subbian Vs. Siva Kumar, and the unreported decision of this Court rendered by S.S. Subramani, J. in Kanagarathinam v. S. Ramaswamy (C.R.P. Nos. 67 and 68 of 1999) and the decision of this Court in Ponnuswamy Pandaram v. Salem Vaiyappamalai Jangamas Sangam etc. (1985) (1) MLJ 380-98 L.W. 112) and held that where the order tantamounts to shutting out evidence which the party is entitled to place before the Court to establish his case, the order would be regarded as one which decides the right of the party and hence, civil revision petition is maintainable. Learned Judge distinguished the decision of S. S. Subramani, J. in Ramaiah Thevar "s case on the ground that in that case originally on the basis of the application filed by the revision petitioner therein an expert opinion was sought for and the expert returned the documents expressing his inability to give any reliable opinion and thereafter the revision petitioner applied to the Court to send the documents once again for expert opinion, and hence, the facts in Ramaiah Thevar"s case are distinguishable.

10. In so far as the facts of the case are concerned, it is not a case where the expert opinion is sought for on the basis of the same material which was rejected earlier. But, it is a fresh application after the evidence was let in on behalf of the plaintiff as well as by the defendants. I respectfully follow the decision of the Nainar Sundaram, J. in Ponnuswamy Pandaram v. Salem Vaiyappamalai Jangamas Sangam etc. (1985 (1) MLJ 380) = 98 L.W. 112 where the learned Judge considered the expression case decided and held as under: -

"But the decisive factor to find out the revisability or otherwise of such orders is to determine whether by such orders some right of obligation of the parties in controversy gets decided. The right of obligation need not necessarily have a nexus to the main lis and in the progression of the suit towards its final adjudication and the final resolution of the controversy between the parties. Very many rights and obligations both in substantive law as well as in procedural law and, if they get decided by such interlocutory orders, they are certainly revisable... the question as to whether a particular order adjudicates some rights of obligations of the parties in controversy will depend upon the nature of the right of obligation and it is not possible to lay down a uniform rule and no decision including any of the highest Court in the land, attempted to do so."

11. In my view, when, by an order, the party is prevented from letting in evidence which would be relevant to substantiate his case, the order passed would adversely affect his rights, and hence, that order is subject to revision u/s 115 of the Code of Civil Procedure. However, an order cannot be revised unless it falls within the scope of section 115 (i) (a) (b) or (c) of the CPC and it is also an order as contemplated by clause (a) or (b) of proviso to section 115. In my view,

apart from the restrictions found in section 115, Code of Civil Procedure, there are no other restrictions found in Section 115 of the CPC against the maintainability of the Civil Revision petition. I therefore, hold that the decision of S.S. Subramani, J. in Ramaiah Thevar's case is distinguishable on the facts of the case.

12. Further, as rightly pointed out by Mr. S. Gopalratnam, learned senior counsel, 1976 Amendment Act enlarged the scope of revisional jurisdiction as the right of appeal in the case of an order passed u/s 47 of the CPC is taken away and the only remedy available to the aggrieved party is to approach the Court by way of revision against the order passed u/s 47 of the Code. In this view of the matter, I hold that the provision of section 115 of the Code is not liable to be narrowly construed but widely construed and accordingly, I hold that as against the order passed by the learned Subordinate Judge declining the request of the plaintiff to send the suit promissory note for expert opinion, the revision is maintainable. In the view I am taking, it is not necessary to consider the various decisions relied upon by Mr. G. Rajagopal, learned senior counsel in support of his plea that the revision is maintainable against the impugned order.

13. In so far as the merits of the case are concerned, Mr. S. Gopalratnam, learned senior counsel relied upon the decision of the Allahabad High Court in Prem Narain Vs. Sanjay Purwar and others,) where the Allahabad High Court was dealing with an order refusing to give permission to lead expert evidence to prove that the document in question was in the handwriting of a co-defendant and also for summoning the co-defendant to give his writing before the court for the purpose of examination thereof by the expert. The Allahabad High Court while considering the case declined to interfere on the ground that the impugned order would not affect the right of the revision petitioner who was the plaintiff in the suit resulting in the failure of justice, and the learned Judge while so holding, held as under :-

"Indisputably, if the impugned order is varied or reversed, it would not finally dispose of the suit or any other proceedings. The said provisions also ordains against interference unless the order, if allowed to stand, would occasion failure of justice or cause irreparable injury to the party against whom it is made. In the instant case, as already stated earlier, the impugned order does not affect any right of the defendant-revisionists qua the plaintiff in the suit resulting in failure of justice."

It is relevant to notice here that the Allahabad High Court has not held that the revision is not maintainable, but refused to interfere on the ground that there would be no failure of justice and irreparable injury would not be caused to the parties if the order is allowed to stand.

14. The next decision relied upon by Mr. Gopalratnam, learned senior counsel is the decision of the Kerala High Court in Erinhikkal Parammal Ravindran v. K. Roja (AIR 1974 Ker 67). The facts of the case before the Kerala High Court are that

the petitioner therein was the husband applied for a decree of divorce on the ground that the wife committed adultery. That petition was filed in the year 1987 and the wife filed her written statement in the year 1987 wherein the wife disputed the letters to the alleged adulterer. The evidence of the husband commenced in the year 1990 and the evidence of the wife was also recorded in the year 1991. Subsequently, an application was filed to secure the evidence of handwriting expert for the purpose of establishing the identity of handwriting of the disputed letters. The Court while holding that the revision is not maintainable also held that the trial Court has given reason for rejecting the application. The Kerala High Court held as under :-

"The learned trial Judge has given good reasons for rejection of the application. The application was filed after the evidence of the husband was completed. The wife had denied in the written statement that she wrote the letters. This should have alerted the husband to take steps for having evidence of an expert in good time. Yet the husband waited until the wife's evidence was recorded and the wife, for the second time, denied that the letters are in her handwriting. This happened three years after the petition was filed. Therefore the learned Judge was within his authority in rejecting the application on the ground that such a step would cause further delay in the disposal of the petition. He did not fail in the disposal of the petition. He did not fail to exercise authority. There is no irregularity or illegality in the exercise of the jurisdiction by the learned trial Judge."

15. In *Ramchand Vs. Laxmikumar*, , the Rajasthan High Court held that where a party knowing it well did not produce the evidence at the appropriate time when full opportunity was given and wants to examine the witness at the last hour and that too, after making a clear declaration in the Court that he would examine only some other witness, there is absolutely absence of proof of failure of justice or irreparable injury in the case so far as the invoking of jurisdiction of the Court u/s 115 of the Code is concerned. A similar view was taken by the Punjab and Haryana High Court also in the case *Surjan Singh Vs. Paras Ram* (deceased by L.R.'s) and others, wherein the learned Judge held as under : -

"The intention of the Legislature in amending the CPC by providing Rule 17A that power of the Courts in the matter of allowing additional evidence has been circumscribed i.e. such power to be exercised within the corners of the statute. Court's satisfaction is necessary about the exercise of due diligence by the party who desires the court to exercise discretion in the matter to establish that if due diligence had been exercised, the document could not have been produced earlier i.e. the existence of the documents were not known when the party led the evidence.

Where the plaintiff had relied upon the documents sought to be produced as additional evidence but had not produced copies thereof along with the plaint or during the time allowed to him to produce his evidence, the plaintiff was not entitled to claim production thereof later on as, if he Had exercised due diligence,

he could have produced them earlier."

16. The plaintiff herein instituted the suit for recovery of money on the basis of the suit promissory note. The defendants, in the first available opportunity, in their written statement filed, no doubt, have taken a definite stand that the suit promissory note was not executed by them. It is no doubt true that the stand taken by the defendants in the written statement, should have alerted the plaintiff to produce all available evidence. However, after the closure of the evidence on the plaintiff as well as the defendants' side, the plaintiff has taken out an application to summon certain records from the office of the Sub-Registrar and to examine him and that application was probably filed to find out whether there is any admitted signature of the defendants in the document pending registration with the Sub-Registrar. Learned Subordinate Judge rejected that application. Then, the plaintiff filed the present application to reopen the case to enable the plaintiff to examine the handwriting expert. Learned Subordinate Judge held that the plaintiff was given sufficient opportunity to let in evidence and in spite of the same, the plaintiff has not chosen to examine the handwriting expert. Learned subordinate Judge held that the Plaintiff was given sufficient opportunity to let in evidence and in spite of the same, the plaintiff has not chosen to examine the handwriting expert. In my view, the learned Subordinate Judge has not exercised his discretion properly. It is no doubt true that on the basis of the decision of the Allahabad High Court in Prem Narain Vs. Sanjay Purwar and others, as well as by the Kerala High Court in Erinhikkal Parammal Ravindran Vs. K. Roja and Others, , when the defendants have taken a specific stand in the written statement that the suit promissory note was not executed by them, the plaintiff should have been vigilant and prepared to lead the best available evidence to establish the signatures of the defendants in the suit promissory note. It must be conceded that the plaintiff was not vigilant when opportunity was given to him to lead evidence. But, the purpose of the trial is to find out the truth of the case on the basis of evidence available on record. The view of the trial Court seems to be that the plaintiff was not vigilant when the opportunity was granted to him to lead evidence, and hence, the Court will not permit fresh evidence. I am of the view that if fresh evidence is not allowed to be let in, then, the court may have to decide on the basis of the available evidence on record as to the correctness of the respective stand taken by the parties to the suit. But, if fresh evidence in the form of expert opinion on the disputed signatures in the promissory note is allowed, the Court, apart from the evidence already available on record, would have in its possession the expert evidence and on the basis of the entire evidence on record, the Court would be in a better position to analyse the evidence and appreciate the respective case put forward by the parties and then arrive at a conclusion which would render justice to both the parties. I am of the view that the plaintiff would gain nothing by prolonging the trial of the suit, and when his earlier attempt to summon the records from the Sub-Registrar's Office containing the admitted signatures of the defendants has failed, the plaintiff filed the present application. I am of the view that the

successive applications filed by the plaintiff show that he was attempting to bring in the best evidence on record so that the case put forward by him could be better appreciated. I hold that the learned subordinate Judge by the impugned order has shut out the best possible evidence coming forth which would throw light on the disputed signatures in the suit promissory note. It is hardly necessary to emphasise that the Courts of law exist not to punish the litigants for their lapses, but to render justice. The suit is of the year 1998 and after the defendants filed their written statement in April, 1999, the trial commenced in March, 2000. It is not a case where the plaintiff deliberately delayed the trial of the suit as he was examined, his witness was also examined and the second defendant was also cross-examined without delay by the plaintiff. When the second defendant denied the signatures during the course of her examination, the plaintiff took steps to establish that the signatures found in the suit promissory note are that of the defendants. Learned Subordinate Judge, in my view, has overlooked all the crucial aspects of the matter, particularly that there would be no gain or advantage to the plaintiff by delaying the trial in a money suit instituted by him. No doubt, there is a lapse on the plaintiff, but that is not a ground to punish him by preventing him to let in best possible and relevant evidence. In my view, learned Subordinate Judge should have allowed the application on payment of heavy costs. I hold that the learned subordinate Judge, Pattukkottai has not exercised his discretion properly by not permitting the plaintiff to let in expert evidence and hence, it calls for interference. Accordingly, the Civil Revision petition is allowed on condition that the Petitioner shall pay the costs to the counsel for the respondents herein a sum of Rs. 2,500/- within six weeks from this date. Civil Revision petition is allowed. Consequently, C.M.P. No. 17369 of 2000 is dismissed.