
(1948) 10 MAD CK 0005
In the Madras High Court

Vembu Ammal

APPELLANT

Vs

Esakkia Pillai

RESPONDENT

Date of Decision : 07-10-1948

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 17(1)

Citation : (1949) 1 MLJ 71

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—This is a petition for revising and setting aside the order of the District Munsiff of Tinnevely dated 27th

September, 1946, in I.A. No. 143 of 1946, a review petition, in S.C.S. No. 99 of 1946. The facts are briefly as follows:

2. S.C.S. No. 99 of 1946 was a suit filed by the petitioner Vembu Ammal, against the respondent, Esakkia Pillai, for recovering the amount due

on a promissory note, Ex. P. 1, dated 17th February, 1945, for Rs. 190 with subsequent interest and costs. Vembu Ammal had alleged that

Esakkia Pillai had written the whole promissory note, Ex. P. 1, himself, and had signed in it, and that the amount was due. She had examined three

witnesses, P.Ws. 2 to 4, who swore that Esakkia Pillai had written the promissory note himself and signed in it. Esakkia Pillai had denied that he

had written the suit promissory note or signed in it.

3. Mr. B.R. Charkrawarthy, the District Munsiff, who tried the suit first gave a decree to the petitioner for the suit amount and costs, on nth June,

1946. The respondent put in I.A. No. 143 of 1946 for reviewing the judgment delivered on nth June, 1946, by comparing his signature in a

registered sale deed of November, 1945, with the signature in Ex. P. 1. He had not deposited the decree amount or got any order of the District

Munsiff regarding security. The petitioner raised her objection regarding this (under the proviso to Section 17(1) of the Provincial Small Cause

Courts Act) when the review petition came on for hearing before the subsequent District Munsiff, Mr. Balasubramanian Chettiar. The learned

District Munsiff, who heard the review petition, remarked that there was little doubt, that, for the purpose of reviewing the judgment, security must

have been furnished by Esakkia Pillai and accepted within thirty days from the date of the decree, evidently relying on the Full Bench decision of

this Court in V.M. Assan Mahomed Sahib Vs. M.E. Rahiman Sahib, holding the provisions of Section 17(1) of the Provincial Small Cause Courts

Act to be mandatory and not merely recommendatory. But he went on to say that his predecessor must have admitted the review petition without

security probably under the mistake that no security was necessary for reviewing the judgment, and that, as the petition had been admitted and the

order of admission had not been got quashed, he must proceed with it. He then went on to discuss the merits of the case. He held that the signature

in Ex. P. 1 was not the signature of the respondent as it differed from the signature of the respondent in the registered sale deed of November,

1945. He also stated that the plaintiff (petitioner) had not let in any evidence regarding the consideration. In the end, he reviewed and set aside the

judgment of his predecessor and dismissed the suit with costs. Hence this petition. The respondent has remained absent in this Court though

properly served.

4. The learned Counsel for the petitioner urged that the lower court's order in the review petition was passed without jurisdiction and was patently

wrong in law and also perverse in fact, and ought to be set aside, and that the original decree in the petitioner's favour, passed on 6th June, 1946,

must be restored with costs throughout. I agree. The proviso to Section 17(1) of the Provincial Small Cause Courts Act clearly says that an

applicant for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the

decree or in pursuance of the judgment, or give such security for the performance of the decree, or compliance with the judgment, as the Court

may, on a previous application, made by him in this behalf, have directed. The provisions are mandatory, and not merely recommendatory, and

the Full Bench ruling in V.M. Assan Mahomed Sahib Vs. M.E. Rahiman Sahib, , is conclusive on the point. The respondent did not make a

previous application, as required by the proviso, or deposit the amount due from him under the decree or obtain an order of Court regarding the

security to be furnished by him. Probably, as the learned District Munsiff who reviewed the judgment remarked, the District Munsiff who admitted

the review petition without security was not aware of the proviso to Section 17(1) of the Provincial Small Cause Courts Act and, perhaps, the

copy of the Provincial Small Cause Courts Act before him was an old one and did not contain this proviso, and he was misled into thinking that no

security was required. Whatever it be, the lower Court erred in law in admitting and proceeding with a petition for review without necessary

deposit or security, even after the mandatory need for security was brought to its notice. Even its finding on fact, namely that the signature in Ex. P.

1 was not the respondent's, was patently wrong. P.Ws. 1 to 4 had sworn that the respondent had himself written the suit promissory note in their

presence. Their evidence on this point was not shaken. The learned District Munsiff was not justified, as a layman, in comparing the signature in Ex.

P. 1 with the signature in an unexhibited sale deed of November, 1945, not even filed by the respondent in the trial Court, and in coming to the

conclusion that the two signatures were radically different and that the signature in Ex. P. 1 must, therefore, be a forgery. Even a handwriting

expert's opinion will not be conclusive on the point. Here, the learned District Munsiff was not a handwriting expert; nor was the sale deed

containing the signature which he used for comparing with the signature in Ex. P. 1 exhibited; nor was the signature in the sale deed admitted by this

petitioner to be the signature of the respondent. Any comparison of a disputed signature will be only useful when it is done with an admitted

signature; otherwise, it will be a case of blind leading the blind. There was no need also for the petitioner to prove consideration when the

respondent had not denied the receipt of consideration and raised an issue regarding it.

5. In these circumstances, the judgment of the learned District Munsif in review is set aside, and the original judgment and decree of the District

Munsif dated nth June 1946 restored with costs throughout.