
(2014) 09 MAD CK 0263

Madras High Court

Case No: C.R.P. (PD) No. 4772 of 2011 and M.P. No. 1 of 2011

A. Thiagarajan

APPELLANT

Vs

G. Ramachandran

RESPONDENT

Date of Decision: Sept. 18, 2014

Acts Referred:

- Evidence Act, 1872 - Section 45

Citation: (2014) 5 LW 347

Hon'ble Judges: K. Ravichandra Babu, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandrabaabu, J.

This civil revision petition is filed challenging the order made in I.A. No.628 of 2011 in O.S. No.354 of 2009 dated 11.11.2011, in dismissing the application filed by the petitioner herein under section 45 of the Indian Evidence Act, seeking for sending the suit documents No. 1 (Pronote) for comparison of age of the ink found in the suit document No. 1 (Pronote) and to get expert opinion from the Forensic Department Laboratory.

2. The court below dismissed the said application on the reason that the petitioner herein wanted to drag on the proceedings by filing one petition after another without any bonafide. Even though this civil revision petition is filed challenging the above said order, the learned counsels appearing on either side placed their submissions with regard to the scope of sending documents for opinion in respect of the age of writing under section 45 of the Evidence Act, by referring to various decisions rendered by this Court as well as by the Hon"ble Supreme Court.

3. The learned counsel appearing for the petitioner relied on a decision of the Hon"ble Supreme Court reported in [T. Nagappa Vs. Y.R. Muralidhar](#), , to contend that the document can be sent for expert opinion to find out the age of the ink.

4. Per contra, the learned counsel for the respondent submitted that this court in a decision reported in [R. Jagadeesan Vs. N. Ayyasamy and Another,](#) , found that such exercise of sending document in respect of the age of writing is only futile in view of non availability of scientific method for assessing the age of writing. He further submitted that the said decision has been subsequently followed by this court in a decision reported in [K. Vairavan Vs. Selvaraj,](#) as well as in an unreported decisions made in CRP(PD) No. 163 of 2012 dated 02.04.2013 and CRP(PD) No. 1472 of 2010 dated 17.07.2013. He further brought to the notice of this Court that the order made in the decision reported in [R. Jagadeesan Vs. N. Ayyasamy and Another,](#) has been confirmed by the Hon"ble Supreme Court in Special Leave Appeal (Crl) No. 2033 of 2010 dated 19.03.2010.

5. Heard the learned counsels appearing on both sides and perused the materials placed on record.

6. The issue involved in this case as to whether a document can be sent under section 45 of the Evidence Act for expert opinion to find out the age of writing is no more res integra, in view of the fact that the said issue has been considered by this Court in the decision reported in [R. Jagadeesan Vs. N. Ayyasamy and Another,](#) and a finding was rendered at paragraph Nos. 9 and 10, which are as follows:

"9. In view of all the above, in my considered opinion, sending the documents for opinion in respect of the age of the writing on documents should not be resorted to hereafter by the Courts unless, in future, due to scientific advancements, new methods are invented to find out the age of the writings.

10. Now I have to consider the judgments relied on by the learned counsel on either side. In [T. Nagappa Vs. Y.R. Muralidhar,](#) , I have to state that the question whether the age of the writings could be scientifically examined and any opinion in this regard could be offered never came up for consideration before the Hon"ble Supreme Court. In that case, the Hon"ble Supreme Court was concerned with the right of the accused to have fair trial so as to send the document for comparison by an expert. It was never argued before the Hon"ble Supreme Court that there are no experts available to examine the age. Therefore, the judgment of the Hon"ble Supreme Court relied on by the respondents is not in any manner helpful to them. The learned counsel for the petitioner has relied on the judgment of this Court in S.Gopal"s case, wherein Hon"ble Mr. Justice M.Jeyapaul has held that there is no method to find out the age of the document with scientific accuracy. However, the learned counsel appearing for the respondents would submit that this judgment was prior to the judgment of the Hon"ble Supreme Court. He would therefore submit that subsequently in another judgment reported in [V.P. Sankaran Vs. R. Uthirakumar,](#) , this Court has directed to forward the document for such opinion. In my considered opinion, a careful reading of the said Judgment would also go to show that there was no occasion for the learned Judge to answer the question as to whether there is any expert available in terms of Section 45 of the Evidence Act to offer any opinion regarding the age of the document. The entire case proceeded under the premise as

though there are experts to offer opinion regarding the age of the documents. Now, as I have already stated, the Head of the Department of Forensic Science is before me and from whom I have the benefit of ascertaining that there is no expert in the field and also that all such documents sent already were returned without offering any opinion. Therefore, the said judgment also would not come to the help of the respondents."

7. A perusal of the said decision would in fact show that the decision relied on by the learned counsel for the petitioner herein and reported in [T. Nagappa Vs. Y.R. Muralidhar](#), was also referred to by the learned Single Judge and distinguished the same. It is further seen that the above referred decision of the learned Single Judge was also confirmed by the Hon"ble Supreme Court in Special Leave Appeal (Crl) No. 2033 of 2010 dated 19.03.2010, by dismissing the Special Leave Petition by stating that no grounds to interfere. The said decision reported in [R. Jagadeesan Vs. N. Ayyasamy and Another](#), has been subsequently followed in [K. Vairavan Vs. Selvaraj](#), and by other two learned Single Judges in CRP (PD) No. 163 of 2012 dated 02.04.2013 and CRP (PD) No. 1472 of 2010 dated 17.07.2013 in respect of the same issue and found that no scientific facilities available for assessing the age of the ink. Since the issue involved in this case is squarely covered by the above decisions and one of such decision was also confirmed by the Hon"ble Supreme Court, this civil revision petition is dismissed by following the above said decisions. Since the suit is of the year 2009, the court below is directed to take up the suit and dispose of the same on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is also dismissed.