

**(2014) 12 MAD CK 0371**

**Madras High Court (Madurai Bench)**

**Case No:** C.R.P. (MD) No. 1429 of 2013 and M.P. (MD) Nos. 2 and 3 of 2013

C. Balasubramanian

APPELLANT

Vs

P.L. Jeganathan

RESPONDENT

**Date of Decision:** Dec. 3, 2014

**Hon'ble Judges:** M. Duraiswamy, J

**Bench:** Single Bench

**Judgement**

@JUDGMENTTAG-ORDER

M. Duraiswamy, J.

The defendant in the suit in O.S.No. 114 of 2010 on the file of the Sub Court, Sankarankovil has filed the above Civil Revision Petition, challenging the fair and final order passed in I.A.No. 65 of 2012.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. The plaintiff filed the suit in O.S.No. 114 of 2010 for specific performance. The defendant filed his written statement, wherein he has disputed the execution of the document and also contended that the suit agreement is a fabricated document. In these circumstances, the plaintiff filed an application in I.A.No. 65 of 2012 to compare the signature found in the suit agreement, dated 10.04.2008 with the signature found in the partition deed, dated 10.06.2002.

4. The learned counsel appearing for the revision petitioner submitted that since the suit agreement is an unstamped unregistered document, the same cannot be relied upon for any reason. In support of his contention, the learned counsel has relied upon the Judgment of the Division Bench of this Court in A.C. Lakshmipathy and another Vs. A.M. Chakrapani Reddiar and five others, wherein the Division Bench has held that an unstamped unregistered document cannot be looked into for any purpose.

5. The ratio laid down in the said Judgment is not applicable to the facts and circumstances of the case on hand for the reason that the present Civil Revision Petition has been filed challenging the order passed by the trial Court allowing an application to compare the signature found in the suit pro-note.

6. By getting a report from an expert with regard to the signature found in the pro-note will not give any advantage to the plaintiff for marking the document and prove the same. At the most, the plaintiff can establish the signature found in the document is that of the defendant. With regard to the admissibility of the document, the defendant can always raise objection at the time of marking the document.

7. It is also settled position that mere marking of the document is not sufficient and the document should be proved by adducing proper evidence with regard to the execution of the document. Since the defendant has raised a plea that the signature found in the suit agreement is not that of the defendant, the application filed by the plaintiff for comparing the signature by an expert is just and proper and the trial Court has also rightly allowed the application.

8. The learned counsel appearing for the revision petitioner submitted that the disputed signature have to be compared only with a document of contemporaneous period and when the suit agreement was of the year 2008, comparing the signature found therein with that of the signature found in the partition deed of the year 2002 is erroneous.

9. It is true that this Court as well as Apex Court held that the disputed signature can be compared only with the signature found in the document of a contemporaneous period.

10. The learned counsel appearing for the respondent submitted that a registered sale deed, dated 05.11.2007 and a sale deed, dated 01.09.2006 both executed in favour of some third parties by the defendant can be compared with the signature found in the suit agreement. The learned counsel also filed the typed-set of papers enclosing the two documents.

11. On a perusal of the typed-set of papers, it could be seen that both the documents are registered documents and the defendant was also identified by the identifying witnesses before the Sub-Registrar at the time of registration of the document. Therefore, the defendant cannot dispute his signature found in those two documents.

12. In these circumstances, instead of comparing the signature with the partition deed, dated 10.06.2002, the trial Court shall direct the hand writing expert to compare the signature found in the suit agreement, dated 10.04.2008 with the signature of the defendant found in the suit sale deeds, dated 01.09.2006 and 05.11.2007.

13. With these modifications, this Civil Revision Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.