



C.R.P.(PD)(MD)No.968 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2026

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P.(PD)(MD)No.968 of 2024

and

C.M.P.(MD)No.5249 of 2024

A.Kalimuthu

... Petitioner

Vs

1. Muthusamy

2. Alagirisamy

3. Duraisamy @ Alagarsamy

4. Nagarajan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to the fair and decreetal order dated 07.02.2024 passed in I.A.No.9 of 2024 in O.S.No. 202 of 2009 by the District Munsif Court (FAC), Periakulam and set aside the same by allowing this Civil Revision Petition.

For Petitioner : Mr.T.Balaji

For Respondents : Mr.S.MeenakshiSundaram,
Senior Counsel for
Mr.T.Arivukumar



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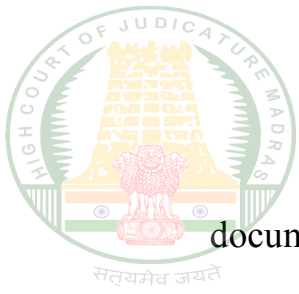
ORDER

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The Civil Revision Petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioner/ 4th defendant in the suit seeking comparison of the thumb impression of testator Alagarsamy found in the Will dated 09.06.2008 along with the admitted Will dated 19.11.2003.

2. The first respondent herein filed a suit seeking partition of his 1/5th share in the suit properties. The suit was resisted by the 4th defendant by relying on the Will allegedly executed by Alagarsamy Nayakkar on 09.06.2008. Since there is a dispute with regard to the Will relied on by the plaintiff, the instant application has been filed seeking comparison of the thumb impression of the testator found in the Will along with the admitted earlier document. The said application was dismissed by the trial Court and aggrieved by the same, the revision is filed.

3. The learned counsel appearing for the petitioner would submit that if the disputed thumb impression of the testator found in the disputed testamentary document is compared with the admitted

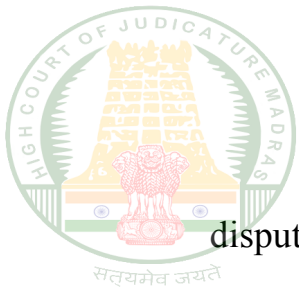


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documents, the same will help the Court to decide the controversy involved in the suit. Therefore, the application filed by the petitioner/ 4th defendant ought to have been allowed.

4. The learned Senior Counsel appearing for the first respondent/plaintiff would submit that, earlier, similar application was filed by the petitioner in I.A.No.210 of 2017 seeking comparison of the signature of Alagarsamy found in the disputed Will along with the earlier Wills and the said application was allowed and experts filed a report stating that thumb impression found in the disputed Will could not be compared with the earlier Wills in view of the smudged nature of the thumb impression found in the disputed Will. Therefore, according to the learned Senior Counsel, the second application filed by the petitioner is not at all maintainable.

5. A perusal of the impugned order would suggest that already the petitioner filed an application in I.A.No.210 of 2017 and the said application was allowed. The disputed Will dated 09.06.2008 was sent for experts opinion for comparison with admitted Wills. The expert submitted a report stating that the thumb impression found in the



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disputed Will was smudged and therefore, it could not be compared with the thumb impression found in the admitted Wills. The petitioner without disclosing the allowing of earlier IA with similar prayer and the subsequent developments regarding the opinion expert, filed yet another application seeking the very same prayer. The trial Court taking into consideration the earlier opinion expressed by the expert, rightly dismissed the application.

6. It is further to be pointed out that a testamentary document has to be proved by calling one of the tester to the document as per Section 68 of the Evidence Act, 1872. The testamentary document cannot be proved by getting expert opinion. In view of the same, I don't find anything to interfere with the impugned order passed by the trial Court and accordingly the Civil Division petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.07.2026

NCC : Yes / No
Index : Yes / No
vsm



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To

1. The District Munsif Court (FAC), Periakulam.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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