

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.1480 of 2013

and

M.P.No.1 of 2013

Deivanai

.. Petitioner

Vs

1.Muthusamy
2.Sathyamoorthy
3.Sivakami
4.Parvathi
5.Santhi\6.Lakshmi
7.Deivasikamani
8.Vadivel
9.Rasan
10.Vajravel @ Karuppannan
11.R.Latha

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 09.04.2012 made in I.A.No.143 of 2012 in O.S.No.61 of 2009 on the file of the Principal Sub Court, Erode.

For Petitioner : Mr.A.Sundaravadhanan

For Respondents : Mr.G.Rajan (For R1 to R5)
Mr.G.B.Saravanabhavan (For R6, R8 to R11)
No appearance (For R7)

ORDER

The Civil Revision Petition is filed against the order dated 09.04.2012 made in I.A.No.143 of 2012 in O.S.No.61 of 2009 on the file of the Principal Sub Court, Erode.

2.The respondents 1 to 5 as plaintiffs filed a suit in O.S.No.61 of 2009 for the following reliefs:

(a) Declaring the will executed by Gurunatha Moopan on 06.08.1990 is valid, genuine and enforceable, acted upon and binding upon the defendants;

(b) Declaring that the plaintiffs are the absolute owners of the suit A schedule properties; and

(c) Permanent injunction restraining the defendants, their men, henchmen, agents, relatives and their successors not to interfere with the plaintiffs peaceful possession and enjoyment of the A Schedule property.

The petitioner who is the second defendant has disputing the genuinity of the will and hence, he filed an application under Order 26 Rule 10(A) and Section 151 of CPC in I.A.No.143 of 2012 to send for the documents from the Kandampalayam Jaggery Produces Co-operative Society for comparing the disputed signature in the original will dated 06.08.1990 with the admitted

signatures in the documents sent from the Kandampalayam Jaggery Produces Co-operative Society and to obtain the opinion from the expert. It is submitted that the application has been filed to send for the documents from the Kandampalayam Jaggery Produces Co-operative Society, Perundurai, the entire file of final audit report for the year 1985-1986 to facilitate the hand writing expert to compare the disputed signature in the will with the admitted signature in the audit report. The said application was dismissed. Against which, the present Civil Revision Petition has been filed.

3.Learned counsel appearing for the petitioner submitted that the document has to be send for and if the hand writing expert is not able to compare the same then it is left open to the parties to prove the will. He further submitted that once the application under Order 26 Rule 10(A) and Section 151 of CPC is pending the Court has erroneously held that there is no necessity to send for the documents for the year 1985-1986 and without looking the original documents, the court shall not held that no purpose will be served if the document is sent for. Hence, he prayed for setting aside the order passed by the Trial Court.

4.The learned counsel for the respondents 6, 8 to 11 who is sailing along with the petitioner would submit that those documents are public documents

wherein the admitted signature of Gurunatha Moopan is available and hence, the documents are necessary. He further submitted that the signature in the document relating to the period 1985-1986 has not been denied by the respondent in the counter. Hence, he prayed for setting aside the order passed by the Trial Court.

5. Resisting the same, the learned counsel for the respondents 1 to 5 submitted that the document related to the period 1985-1986 and the will is of the year 1990. He further submitted that the document is not a contemporary document and hence, no purpose would be served if the document is sent for. That factum was rightly considered by the Trial Court. Hence, he prayed for dismissal of the revision petition.

6. Considered the rival submissions made on both sides and perused the typed set of papers.

7. The respondents 1 to 5 as plaintiffs filed a suit for declaring the will executed by Gurunatha Moopan on 06.08.1990 is valid, declaring that the plaintiffs are the absolute owners of the A Schedule properties and for permanent injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the A Schedule property. The

property originally belong to Gurunatha Moopan. He died in the year 1991. The first plaintiff is the son of Gurunatha Moopan, Plaintiffs 3 to 5 are the son and daughters of the first plaintiffs and defendants 1 to 3 are the sisters of the first plaintiff, defendants 4 and 5 are the sons of predeceased daughter of Gurunatha Moopan. The plaintiffs claim title to the property on the basis of the will dated 06.08.1990 and the genuinity has been disputed by the sisters of the first plaintiff.

8. Now, the point to be decided in the suit is whether the will is true and genuine? Since the defendants 2 and 4 have disputed the genuinity of the will, they filed an application in I.A.No.143 of 2012 under Order 26 Rule 10(A) and Section 151 of CPC for sending the documents to Forensic Department for comparison of the disputed signature with the admitted signature. To facilitate the hand writing expert they have to send for the admitted signature of the said Gurunatha Moopan. Therefore, they filed an application to send for the document relating to final audit report for the period 1985-1986 of Kandampalayam Jaggery Produces Co-operative Society, Perundurai. The said application was dismissed. It is well settled dictum of the Apex Court that once the document was sent for the Forensic Department for comparison, the admitted signature for the contemporary period is necessary. But admittedly the will is dated 06.08.1990 and the document to be send for is of the year

1985-1986. So the difference is five years. It is also well settled dictum of the Apex Court that the signature of a person has been vary then and there and for that reason the Apex Court has held that while sending the document for comparison to the hand writing expert, the admitted signature of the person for the contemporary period would be sent. But here according to the learned counsel for the petitioner as well as the respondents 6, 8 to 11 except the final audit report for the period 1985-1986, no other document is available. But as already stated the document is disputed that the admitted signature is nearly five years old and no purpose will be served to send for the document. So, the Trial Court has rightly dismissed the application.

9. The learned counsel for the petitioner would submit that without sending the document how the Trial Court can held that no purpose will be served? But the Trial Court has rightly considered the dictum of the Apex Court that if the disputed signature and the admitted signature belongs to the same period, then only it will facilitate the hand writing expert for comparison. But here, the disputed signature is of the year 1990 and the admitted signature which they want to send for belongs to the period 1985-1986 which is nearly five years old. So, the argument advanced by the learned counsel for the petitioner does not merit acceptance. Hence, I do not find any reason to interfere with the finding of the Trial Court and the impugned order

passed by the Trial Court is hereby confirmed. Consequently, the Civil Revision Petition deserves to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Principal Sub Court, Erode.

R.MALA. J.,

cse

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