



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2015

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P. DEVADASS

CRP PDMD).No.1396 of 2015 and
M.P(MD).No.1 of 2015

V. Kalaiarasan : Petitioner/Petitioner/plaintiff
Vs.

Poornam(died)

1. Saroja
2. Shanthakumari
3. Nagarajan
4. Satishkumar
- Soruba Rani (died)
5. Ramesh kumar
6. Vijayakumar
7. Ilangovan
8. The Branch Manager,
Canara Bank,
Dindigul
9. Ambiga
10. Amutha
11. Amsarani
12. Vijayamala
13. Pandiselvi
14. Sureshpandi

: Respondents/Respondents/Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.290 of 2015 in O.S.No.325 of 1996 on the file of Additional Sub Court, Dindigul, dated 10.06.2015.

For Petitioner : Mr.M.P. Senthil
For R2 to R8 : Mr. M. Thirunavukkarasu
For N1 : No Appearance

ORDER

Aggrieved by this dismissal of his I.A.No.290 of 2015 in O.S.No.325 of 1996, on the file of Additional Sub Court, Dindigul, filed under Order 26, Rule 10(A) of CPC, as to the comparison of finger prints and signatures in Ex.P18 with Ex.P10, the petitioner / plaintiff filed this revision.

2. The suit in O.S.No.325 of 1996 has been laid for partition. There are number of defendants / respondents. Among



them, the real contestants are the plaintiff and the 7th defendant. The suit has become part heard.

3. In his written statement the 7th defendant pleaded that the Ex.P18 Will is not genuine and the thumb impression therein is not of deceased testator Maruthamuthu Pillai which is evident from Ex.P10, document relates to Late Maruthamuthu Pillai.

4. The learned Additional Subordinate Judge, Dindigul, dismissed the Interlocutory Application, coming to the view that it is too early, it is an indirect way to prevent the Court from complying this Court direction to dispose of the suit within the prescribed time.

5. The learned counsel for the petitioner / plaintiff would contend that the comparison and report with regard to Exs.P18 and P10, by an expert furnishing scientific evidence will play a significant role in resolving the controversy involved in this suit. In support of his contention, the learned counsel for the petitioner cited the following rulings:-

(i) Chinnappan and another vs. Chinammal, 2005(3) CTC 286

(ii) S. Chinnathai Vs. K.C. Chinnadurai, 2010(1) MWN (Civil)
413

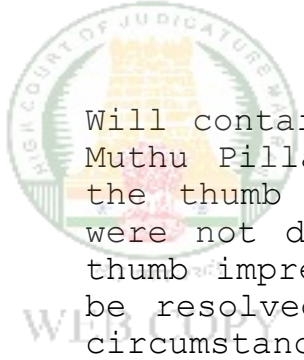
(iii) Saharban Beevi Vs. S. Mumtaj, 2013(2) CTC 394

6. On the other hand, the learned counsel for the respondent would support the impugned order of the Trial Court and he would also draw the attention of this Court that it is a time limit case and it is also one of the oldest suit. This suit is of the year 1996 and the trial is going on on day to day basis. He would further submit that he is not standing in the way of making the comparative study admitted and disputed signature and finger prints in the documents his only apprehension is that it should not be a ploy to send the suit to cold storage derail the on going trial of the suit.

7. I have heard the rival submissions perused the materials on record and the impugned order and the decisions cited by the learned counsel for the revision petitioner.

8. Time limits are being fixed by this Court in many matters with a view to quicken the pace of disposal. Thereafter, a duty is cast on the Court rush up the Trial. It is intended to prevent the parties not to procrastinate the matter. But, at the same time it is not at the cost of bidding farewell to law and necessity and need of the hour. Even if time limit is fixed or not, a matter has to be disposed in accordance with law. Merely because, time limit has been fixed by this Court a lis cannot be disposed of without giving proper and reasonable opportunity to both sides to produce to the Court the relevant evidence. It will be court denying itself a material which will assist it to render a correct and just finding.

9. It is a partition suit. A party has produced Ex.P18 -



Will containing signatures and the thumb impression of Late Marutha Muthu Pillai. They were disputed. Ex.P10 document also contains the thumb impression and signatures of Late Marutha Muthu Pillai were not disputed. This confusion and quarrel with regard to the thumb impression and signature of Late Marutha Muthu Pillai cannot be resolved or explained to the Court by oral evidence. In such circumstances, Section 45 of Evidence Act, Order 26, Rule 10(A) of CPC provides for comparison by an expert. The ratio of the decisions cited by the learned counsel petitioner are also in similar lines.

10. In the circumstances, if the Court feels that for just decision of a case an expert opinion is required and it will assist the Court in resolving the controversy. It can embark upon collection of such scientific evidence. In this connection it is relevant here to extract hereunder the following observations of this Court made in **S. Chinnathai Vs. K.C. Chinnadurai (2010(1)MWN (Civil) 413**, para 18:-

18. However, on a consideration of the above said legal position, the following principles emerge for consideration:

1. The Civil Court is having jurisdiction to send the document to the Forensic Expert for comparing the signatures between the disputed documents with the admitted documents by appointing a Commissioner and get a report.
2. When the Civil Court is exercising its power under Section 73 of the Indian Evidence Act, the Civil Court will have to exercise its power under Order 26, Rule 10-A of the Civil Procedure Cord instead of invoking Section 73 of Indian Evidence Act.
3. The Advocate Commissioner, being an officer of the Court can be asked to take the original document.
4. When the Advocate Commissioner takes the original document, then a certified copy of the same will have to kept under the custody of the Court.
5. The Civil Court cannot direct the disputed document to be compared with the vakalt or written statement of a party.
6. When the Civil Court come to the conclusion that the power under Order 26, Rule 10-A of the Civil Procedure Cord should be invoked, then the Civil Court shall invoke the same even without an Application from the parties concerned in the interest of justice and in order to solve the dispute between the parties.
7. When a document is sent to an expert it should be sent only to the Government Department Expert and not to a private Expert. While sending a document to an expert, the original of the same has to be sent since



it is not possible to compare the xerox copies with the other admitted documents.

8. The Civil Court shall not dismiss an Application seeking for the examination of the document by an expert on the ground of wrong quoting of provision of law and in such a case, the Court shall exercise under Order 26, Rule 10-A of the Civil Procedure Code.

9. The Civil Court shall exercise under Order 26, Rule 10-A of the Civil Procedure Code even when a prayer is sought for a direction to summon the expert to the Court for the purpose of examining the document.

10. An Application filed under Order 26 Rule 10-A of the Civil Procedure Code will have to be filed at the earliest opportunity in the normal circumstances.

11. However, an Application under Order 26, Rule 10-A of the Civil Procedure Code cannot be dismissed merely on the question of delay alone, unless the same is wilful and deliberate.

11. In the circumstances, ordered as under:-

(i) The order of the learned Additional Subordinate Judge, Dindigul passed in I.A.No.290 of 2015 in O.S.No.325 of 1996, dated 10.06.2015 is set aside.

(ii) The certified opinion of Ex.B18 and B10 shall be applied for by revision petitioner and it shall be kept in case records.

(iii) Thereafter, the Trial Court Judge will appoint an Advocate / Commissioner to take the original Ex.B18 and Ex.B10 to the Government Expert in Madurai and he shall obtain the expert's opinion report and produce to the Court.

(iv) The Advocate / Commissioner's remuneration shall be paid by the petitioner / plaintiff.

(v) The revision petitioner / plaintiff will also remit the fees for comparison work to the said Government Department.

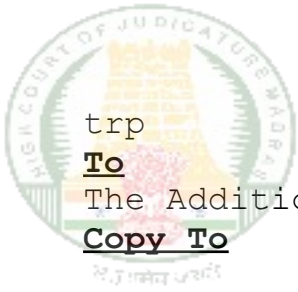
(vi) As already it is a time limit case, if the suit could not be furnished within the prescribed time because of this comparison work and obtaining of Expert's opinion, the Trial Court will seek reasonable extension of time to this Court.

12. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/



trp

To

The Additional Sub Judge, Dindigul,

Copy To

The Registrar (Judicial), Madurai Bench of Madras High Court.

+one cc to Mr.M.P.Senthil, Advocate in SR.No.44367

+one cc to Mr.M.Thirunavukkasu, Advocate in SR.NO.44493

CRP PD(MD) .No.1396 of 2015 and
M.P (MD) .No.1 of 2015
06.08.2015

CSL/NGM-SS/SAR-II/ 25/08/2015

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