

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.155 and 156/2014

S.Muthusamy : Petitioner

versus

1.Venkittammal

2.Palanisamy

3.Subramaniam

4.Ganesan

5. Thangavel

6. Kamalam : Respondents

PRAYER: Revision filed under Article 227 of the Constitution of India against the fair and final order dated 11.09.2013, in I.A.No.623, 624 of 2013 in O.S.No.108 of 2003 on the file of the District Munsif Court, Palladam, Tirupur District.

For petitioner :: Mr.P.M.Duraiswamy

For respondents :: Mr.Anand Venkatesh

COMMON ORDER

These two civil revision petitions are directed against the common order dated 11 September 2013 dismissing the applications filed by the petitioner to reopen evidence and to send the documents for expert opinion.

2. The petitioner filed a suit in O.S.No.108 of 2003 before the District Munsif, Palladam, for a decree of declaration that the settlement deed dated 22 February 2003 in the name of the respondents 3 and 4 are null and void and not binding upon him and for a consequential decree directing partition of the suit property into 7 equal shares and allotment of one such share to him with separate possession and enjoyment. The suit was contested by the respondents by filing written statement.

3. The petitioner after completion of trial filed two applications one for reopening his evidence and another to compare the signature found in the disputed documents by sending the same to the Tamil Nadu Finger Print Bureau, Chennai, by appointing an Advocate Commissioner.

4. The applications were opposed by the respondent by filing counter.

5. The learned Trial Judge was of the view that even without expert opinion, evidence could be let in to prove that the father of the petitioner preferred a complaint, marked as Ex.A-5 and Ex.A-7. The interlocutory orders are under challenge at the instance of the unsuccessful petitioner in I.A.No.623 of 2013 and 624 of 2013.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

7. The petitioner filed interlocutory applications with a contention that respondents 3 and 4 who are defendants 1 to 3 in O.S.No.108 of 2003 got a settlement deed executed by fraudulently representing before his father that the settlements were in favour of all the children. According to the petitioner, his father lodged a police complaint against respondents 3 and 4 on 26 February 2003. The complaint and the representations were marked as Ex.A5 and A6. The complaint submitted to the Sub Registrar, Palladam, was marked as Ex.A-7.

8. The respondents 3 and 4 during the course of the trial disputed the thumb impression of their father found in Exs.A-5 to A-7. The petitioner therefore wanted comparison of the thumb impression found in Exs.A-5 to A-7 with reference to the exhibits marked as Exs.B-3 and B-4.

9. The document marked as Ex.A-6 is a receipt issued by the police. Since respondents 3 and 4 specifically denied the factum of lodging a complaint by the predecessor-in-interest of the petitioner, the learned Trial Judge could have at least sent Ex.A-6 for comparison. The learned Trial Judge was of the view that the matter could be decided on the basis of oral

evidence let in by both the sides.

K.K.SASIDHARAN, J.

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10. I am not in a position to agree with the views expressed by the learned Trial Judge in view of the background facts. There is no question of adducing oral evidence in view of the stand taken by respondents 3 and 4 that no such complaint was preferred by the father of the petitioner. In view of the aforesaid reasons, the common order dated 11 September 2013 is set aside. The application in I.A.No.623 of 2013 and 624 of 2014 are allowed.

11. In the upshot, I allow the civil revision petitions. No costs. Consequently, M.P.No.1 of 2014 is closed.

03.11.2016

Index:Yes/no
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To

The District Munsif Court, Palladam, Tirupur District.

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