

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE K.K.SASIDHARAN

CRP (PD) Nos.1759 & 1760 of 2016
and CMP.No.9307 of 2016

1.Alamelu
2.R.Madhavan

.. Petitioners in both CRPs

Vs

1.Rajamanickam Ammal
2.K.Selvi

.. Respondents in both CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the order dated 09.02.2016 passed in I.A.Nos.45 and 46 of 2016 in O.S.No.102 of 2004 on the file of the III Additional District Judge, Salem.

For Petitioners : Mr.P.Jagadeesan
For Respondents : Mr.Vijay Anand

COMMON ORDER

The petitioners filed an application in I.A.No.46 of 2016 in O.S.No.2014 before the trial Court with a prayer to send the Will dated 16.09.1998 to the Forensic Department, Chennai along with the Thumb Impression Register containing the thumb impression of Venkataraja Konar for comparison and expert opinion.

2. The petitioners have also filed an application in I.A.No.45 of 2016 to send for the documents from the Office of Sub Registrar, Valapady for the purpose of comparison.

3. The learned trial Judge dismissed both the applications primarily on the ground that the Will has to be proved in the manner required under Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act. Feeling aggrieved, the petitioners are before this Court.

4. I have heard the learned counsel appearing for the petitioners and the learned counsel for the respondents, who are on caveat.

5. The petitioners filed a suit for partition on the strength of an unregistered Will dated 16.09.1998, stated to have been executed by Venkataraja Konar, who is none other than the husband of the first petitioner. The suit was contested by the respondents by filing written statement.

6. Even before the commencement of trial, the petitioners have filed two interlocutory applications in I.A.Nos. 45 and 46 of 2016. The learned trial Judge was of the view that the petitioners should prove the Will in the manner known to law. According to the learned trial Judge, merely by proving the thumb impression, it would not help the petitioners to prove the execution of the Will.

7. The petitioners are the plaintiffs in the suit. The petitioners are relying on a Will. The petitioners have to prove the Will in question.

8. The Indian Evidence Act and Indian Succession Act contain provisions with regard to the proof of the Will. The question of sending the Will to an expert would arise only in case the Will is specifically disputed by the respondents including the thumb impression of the executant. It so appears that the respondents have denied only the execution of the Will and they have not disputed the left thumb impression. Even in the written statement, they have not taken up a contention with regard to the left thumb impression of the executor of the Will.

9. The learned counsel for the respondents submitted that the respondents are disputing only the Will stated to have been executed by Venkataraja Konar on 16.09.1998 and not the left thumb impression of Venkataraja Konar.

10. In short, the dispute is only with regard to the genuineness of the Will in question. Since the respondents have disputed the Will, necessarily the petitioners have to take steps to prove the Will, in accordance with law. The question of sending the Will to an expert for comparison of the left thumb impression would arise only in case of the thumb impression is disputed by the respondents.

11. It is too pre-mature on the part of the petitioners to file applications of this nature. The petitioners should await the cross-

examination of the witnesses on their side, including the attesting witnesses to the Will. Though the learned trial Judge has given certain reasons for rejecting the applications, I am of the view that those reasons would not weigh, in case a fresh application is filed by the petitioners before the trial Court, after completion of evidence.

12. In case after trial, the petitioners are of the view that the Will requires to be proved by expert opinion, it is open to them to file an application. It is for the learned trial Judge to decide the matter taking into consideration the evidence produced on the side of the parties, uninfluenced by the observation contained in the order under revision.

The Civil Revision Petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

20.09.2016

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Office to Note :
Issue order copy by 23.09.2016

K.K.SASIDHARAN,J

ds

CRP.(PD).No.1759 & 1760 of 2016

20.09.2016