

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM :

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (PD) No. 4227 of 2009

and

M.P. No. 1 of 2009

1. V. Dhakshinamoorthy
2. Bhakiammal @ Pakiriammal ... Petitioners/ Plaintiffs

.. Vs ..

1. Mr. V. Bharathi
2. Minor Ram Kumar
(Rep. By his father V. Bharathi)
3. Mrs. K. Kavitha
4. Mr. K. Karthick
5. Mrs. Veeramani ... Respondents/ Defendants

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to aside the order passed in I.A. No. 279/ 2009 in O.S. No. 80 of 2008 dated 07.09.2009 on the file of the Additional Subordinate Court, Virudhachalam and pass further orders.

For Petitioners : Mr. K. Thilageswaran

For Respondents : Mr. V. Anand for R1 and R2

R3 to R5 - No Appearance

ORDER

The present Civil Revision Petition is filed seeking to aside the order passed in I.A. No. 279/ 2009 in O.S. No. 80 of 2008 dated 07.09.2009 on the file of the Additional Subordinate Court, Virudhachalam.

2. The plaintiffs are the petitioners and the suit is filed for partition. In the pending suit, I.A. No. 279 of 2009 was filed by the plaintiffs/ petitioners for sending the Will dated 05.05.1994 to an expert, to be compared with the signature of the Testator found in the school certificate and also in the Settlement Deed dated 26.04.1979. The said application was dismissed by the learned Additional Subordinate Court, Virudhachalam on the ground that the disputed signatures can be compared with the admitted signatures, which are contemporaneous and not with the signatures in the vakalat and written statement, that were executed subsequently.

3. The document to be compared with, is the sale deed executed in the year 1979, whereas the alleged Will was written on 05.05.1994. When it is not a subsequent document, the learned Sub Judge ought to have allowed the application. The learned counsel for the respondents also agrees with the preposition, that the learned Sub Judge has misinterpreted the guidelines issued by this Court, in 2006 (3) MLJ 567.

4. Therefore, the order of the learned Additional Subordinate Judge passed in I.A. No. 279/ 2009 in O.S. No. 80 of 2008 on 07.09.2009, is set aside. The plaintiffs are permitted to take the document to an expert to be compared with the admitted signature on the settlement deed dated 26.04.1979. After taking necessary precautions and following the principles set out by this Court in the case of *S. Chinnathai vs. K. C. Chinnadura reported in 2010 (1) LW 646* :

- 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 10A of the Civil Procedure Code instead of invoking Section 73 of the 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 be kept under the custody of the Court.*
- 5) The Civil Court cannot direct the disputed document to be compared with the vakalat or written statement of a party.*
- 6) When the Civil Court comes to the conclusion*

that the power under Order 26 Rule 10A of the Civil Procedure Code 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 10A of the Civil Procedure Code.*
- 9) The Civil Court shall exercise under Order 26*

Rule 10A 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 10A 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 10A of the Civil Procedure Code cannot be dismissed merely on the question of delay alone, unless the same is wilful and deliberate.

5. In terms of the above guidelines, the Civil Revision Petition is allowed. Consequently, the connected M.P is closed. No costs. Since the suit is of the year 2008, the above exercise should be completed in two months and the suit shall be disposed of, on or before 31.10.2016.

22.02.2016

Index: Yes/No.
Internet: Yes/No.
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To
The Additional Subordinate Court,
Virudhachalam.

PUSHPA SATHYANARAYANA J.,

avr

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