

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.701 of 2016
and
C.M.P.No.3612 of 2016

Pappayee
W/o.Ramasamy

... Petitioner

VS

1.Palaniappan
S/o.Kalianna Gounder

2.Ramalingam
S/o.Palaniappan

3.Minor Ilavarasan
represented by guardian
Palaniappan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned Additional District Judge, Namakkal, passed in I.A.No.64 of 2015 in O.S.No.148 of 2012 on 10.08.2015.

For Petitioner : Mr.R.Subramanian

For Respondents : No appearance

ORDER

This revision arises against the order of learned Additional District Judge, Namakkal, passed in I.A.No.64 of 2015 in O.S.No.148 of 2012 on 10.08.2015.

2. Petitioner/plaintiff moved O.S.No.148 of 2012 on the file of learned Additional District Judge, Namakkal, seeking partition. In such suit, petitioner/plaintiff filed I.A.No.64 of 2015 towards obtaining expert opinion on an alleged Will dated 20.03.1996. The Court below, under the impugned order, dismissed such application. Hence, this revision.

3. Heard learned counsel for petitioner.

4. By way of written statement, first defendant/first respondent informed that the property had been bequeathed in their favour under a Will dated 20.03.1996. Along there with, a xerox copy of the alleged Will was filed. Petitioner has obtained a certified copy thereof. The original of the alleged Will of date 20.03.1996 was marked at the stage of cross-examination of petitioner/PW-1. Petitioner challenging the genuineness thereof, has sought expert opinion thereon. On such application being allowed, the alleged original

Will was sent for expert opinion along with admitted thumb impression of the testator. The report of the expert informed that no opinion could be offered since the thumb impression on the alleged original Will was smudged. Thereafter, petitioner had applied for a certified copy of the alleged original Will produced at the stage of his cross-examination and only on obtaining copy thereof, the petitioner found that the thumb impression on such document was smudged whereas the certified xerox copy of the alleged Will filed along with the written statement held by him clearly exhibited the thumb impression. In such circumstances, the petitioner has sought comparison of the thumb impression on the certified copy of the Will obtained by him in the year 2013 with the admitted thumb impression. Such application wrongly had been dismissed on the reasoning that an earlier opinion of expert had been obtained. In the circumstances aforementioned, it would but be appropriate to put up for expert opinion the certified copy of the Will dated 20.03.1996 obtained by the petitioner in the year 2013 along with the admitted thumb impression of the testator for expert opinion.

The Civil Revision Petition is allowed. The order of learned Additional District Judge, Namakkal, passed in I.A.No.64 of 2015 in O.S.No.148 of 2012 on 10.08.2015, is set aside. The Court below is directed to appoint an Advocate

Commissioner towards obtaining expert opinion as indicated above. No costs.

Consequently, connected miscellaneous petition is closed.

15.07.2016

Index:yes/no

Internet:yes

gm

To

The Additional District Judge,
Namakkal.

C.T.SELVAM, J

gm

Civil Revision Petition (PD) No.701 of 2016

15.07.2016