

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

O.S.A. No.208 of 2016

and C.M.P.No.16493 of 2016

M.K.Ravi

... Appellant/Applicant/Plaintiff

-vs-

1.M.K.Giri

2.M.K.Mala

3.M.K.Kala

... Respondents/Respondents/
Defendants

Appeal filed under Order XXXIX Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent against the order and decretal order dated 17.08.2016 made in Application No.2622 of 2016 in C.S.No.733 of 2008 on the file of original side of this Court. To direct the registry to refer and send the documents marked as Ex.D8 & Ex.D9 in C.S.No.733 alleged to have been executed by the applicant/plaintiff to the Hand Writing Expert attached to the forensic department for verification of the genuineness of those documents and applicant/plaintiffs alleged signature in correlation with the signatures found and admitted by applicant/plaintiff in Ex.P3 and marked as Ex-D7 series and vakalat and plaint filed by applicant/plaintiff in the above case and file his detailed opinion and report into this Court.

Prayer in CS.733/2008

for partition of the schedule mentioned property by metes and bounds and allotting 1/4 share in the said property in favour of the plaintiff and put the plaintiff herein into possession of the same b) directing the defendants to render accounts with respect to the suit properties from the date of Plaint and pay to the plaintiff c) for the costs of the suit and for such other reliefs.

For Appellant : Mr.T.D.K.Govindarajan
For Respondent 2 : Mr. Ashok Viswanath

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The appellant filed the suit, C.S.No.733 of 2008, for partition in respect of one-fourth share in the suit property. However, this claim was resisted by the defendants by relying upon a Will dated 15.03.1995 and O.P.No.693 of 2008 was converted into T.O.S.No.3 of 2009 filed by the daughter of the second defendant for Letters of Administration of the Will. The trial in both the suits were over.

2.It is at the aforesaid stage that when the suit was to come up for final arguments that the appellant sought reference to the hand-writing expert attached to the Forensic Department for verification and genuineness of the documents marked as Ex.D-8 and D-9 executed by the plaintiff himself by comparison with the admitted signatures in Ex.P-3, marked as Ex.D-7 (series), vakalat and plaint filed by the plaintiff. This application has been dismissed by the impugned order dated 17.08.2016.

3.Learned Single Judge has noticed that the recording of evidence commenced on 22.02.2012 and was completed on 23.07.2015. Ex.D-8 and D-9 were dated 15.09.1999 and 16.09.1999 and marked through subpoena witness, D.W.1. Ex.D-8 seeks to contain statements to the admission of the Will dated 15.03.1995 by the appellant, while Ex.D-9 is a letter of undertaking signed and executed by the appellant and have been produced from the custody of the bank. These documents came into existence fifteen years back. The appellant claims them to be forged documents. The admitted signatures of the appellant are stated to be available. The appellant never raised objection during the examination of D.W.1 nor took out any application in the relevant period of time and it is after considerable delay that the application had been filed while it was always open to the appellant to have led the witness of any hand-writing expert at the relevant time.

4.The aforesaid are cogent reasons and the appellant should not be able to further drag the proceedings which are already eight years old. The appellant never took steps at the relevant stage of time. We also agree with the conclusion of the learned

Single Judge that the signatures of vakalat and plaint much later cannot be a basis for comparison and in fact, comparison of signatures can only be with contemporaneous signatures.

5.The learned Single Judge, thus, opined that in view of the provisions of Section 73 of the Indian Evidence Act, the Court itself is entitled and not precluded from comparing the signatures on its file especially when at least one document is available, Ex.P-3 for purposes of such comparison, an aspect with which we are in complete agreement.

6.We are of the view that the appellant cannot delay the proceedings and seek orders in an adversarial system to create evidence in his favour, when he has failed to take necessary steps at the relevant stage. In any case, the Court is empowered under Section 73 of the Indian Evidence Act, which reads as under:

''73.Comparison of signature, writing or seal with others admitted or proved. - In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impression.''

7.We are also of the view that in such matters, learned trial Judge (learned Single Judge) should be the master and the appellate Court should not be intervening periodically in the process of trial of suit.

8.We find no ground to interfere with the impugned order.

9.Original Side Appeal, accordingly, stands dismissed. No Costs. Consequently, C.M.P.No.16493 of 2016 also stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

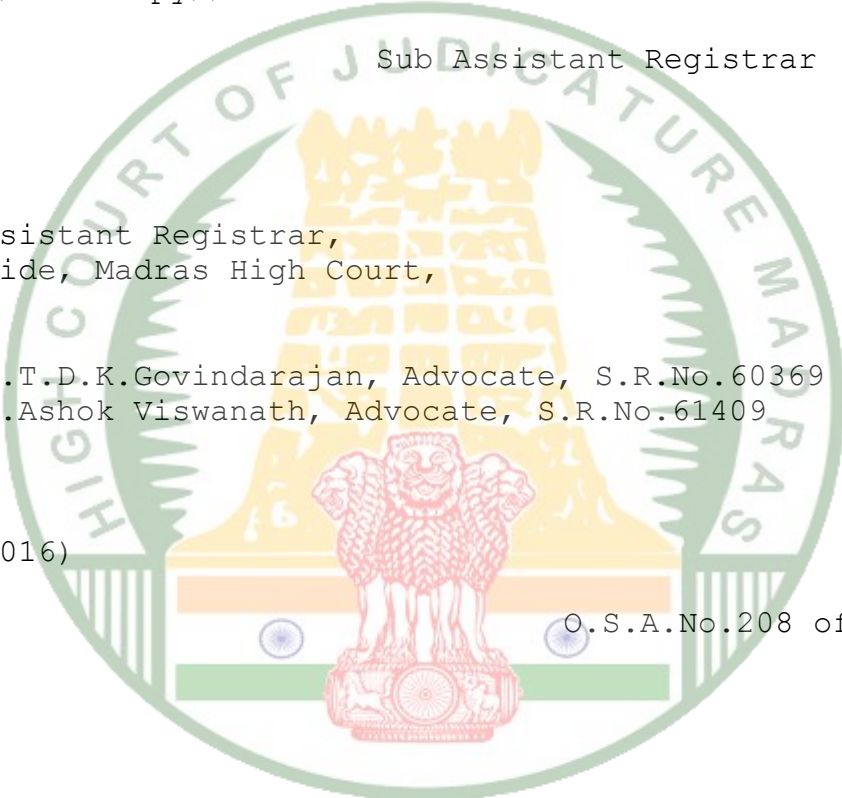
sra
To

The Sub Assistant Registrar,
Original Side, Madras High Court,
Chennai.

+2cc to Mr.T.D.K.Govindarajan, Advocate, S.R.No.60369
+1cc to Mr.Ashok Viswanath, Advocate, S.R.No.61409

AK(CO)
md(21/11/2016)

O.S.A.No.208 of 2016

The seal of the Madras High Court is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the lion capital is a red wheel (Chakras) and a red lotus. The entire emblem is set against a green background with a white border. The words "HIGHER COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. Below the emblem, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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