

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD).No.2085 of 2011  
M.P.No.1 of 2011

M.Amutha

... Petitioner

Vs.

1.R.Dhanasekar  
2.C.Kuppusamy

.. Respondents

**PRAYER:** Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decretal order dated 05.04.2011 made in I.A.No.434 of 2010 in O.S.No.77 of 2006, on the file of the Subordinate Judge's Court at Mettur.

For Petitioner : Mr.P.Valliappan

For R1 to R2 : Mr.R.Nalliyappan

**ORDER**

This Civil Revision Petition has been filed against the fair and decretal order dated 05.04.2011 made in I.A.No.434 of 2010 in O.S.No.77 of 2006, on the file of the Subordinate Judge's Court at Mettur.

2. The petitioner is the first defendant, first respondent is the plaintiff and second respondent is the second defendant in O.S.No.77 of 2006, on the file of the Subordinate Judge's Court at Mettur. The first respondent filed the said suit against the petitioner and second respondent for declaration and recovery of possession. The petitioner filed written statement on 07.02.2007 and is contesting the suit. The petitioner filed I.A.No.434 of 2010 to send the Will dated 01.05.2006 (Ex.A1) to compare with the signature found in the Mortgage deed bearing document no.1268/1998 dated 01.06.1998 and Voter verification card produced by the petitioner and get the report from the hand writing expert. According to the petitioner, her husband V.Manickam has not executed the Will in favour of the first respondent and the alleged Will produced by the first respondent is a forged one. During the time when he is said to have executed the Will, her husband was bedridden due to heart ailment and paralytic stroke. Petitioner, with the help of her brother was looking after her husband. He did not execute any Will in favour of the first respondent. The petitioner did not have the admitted signature of her husband before filing of this petition. Only when searching the documents for the signature of her husband recently,

she got the said Mortgage deed dated 01.06.1998, containing the signature of her husband. According to the petitioner, the first respondent did not produce the original Mortgage deed; but only produced the Mortgage Discharge Receipt.

3. The first respondent filed counter affidavit on 01.11.2010 and denied all the allegations made in the affidavit filed in support of the above application and stated that the deceased V.Manickam executed the Will in favour of the first respondent and handed over all the original documents to the title of him. The documents relied on by the petitioner is only a certified Xerox copy of the Mortgage deed and it is not necessary for deciding the title of the property. The petitioner seeks to compare the signature of the deed in the Will and not the thumb impression. The Court can compare the signature and come to the conclusion and therefore it is not necessary to send the same to the expert opinion.

4. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, dismissed the application holding that it is for the first respondent to prove the genuineness of the Will. The respondents have to prove not only the

signature in the Will, but also execution of the Will by letting in oral and documentary evidence of witnesses and scribe of the Will. Mere proving the signature in the Will will not confer any right on the first respondent based on the Will.

5. Against the said order of dismissal dated 05.04.2011 made in I.A.No.434 of 2010 in O.S.No.77 of 2006, the present civil revision petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner and respondents 1 and 2 and perused the materials available on record.

7. From the materials on record, it is seen that the first respondent is claiming that petitioner's husband executed a Will, bequeathing the property to the first respondent and handed over all the original documents of title to him. The petitioner is disputing the Will and according to the petitioner, the Will is a forged one. To prove that the signature in the Will is not that of her husband's, she filed present application for obtaining the expert opinion with regard to the disputed signature, by comparing the admitted signature in the certified Xerox copy of the Mortgage deed. When the first

respondent came out with a plea of being beneficiary in the Will and when the execution of the Will is disputed by the petitioner, it is for the respondents to prove the genuineness of the Will and that the Will has been executed as per law. The learned Judge held that the respondents not only have to prove the genuineness of the signature in the Will; but also execution of the Will by examining the witness, scribe of the Will. Further, signature in the certified Xerox copy of the document cannot be compared with the disputed signature. The learned Judge considered all the above facts and dismissed the application. There is no illegality or irregularity warranting interference with the order of the learned trial Judge dated 05.04.2011.

8. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No  
gsa

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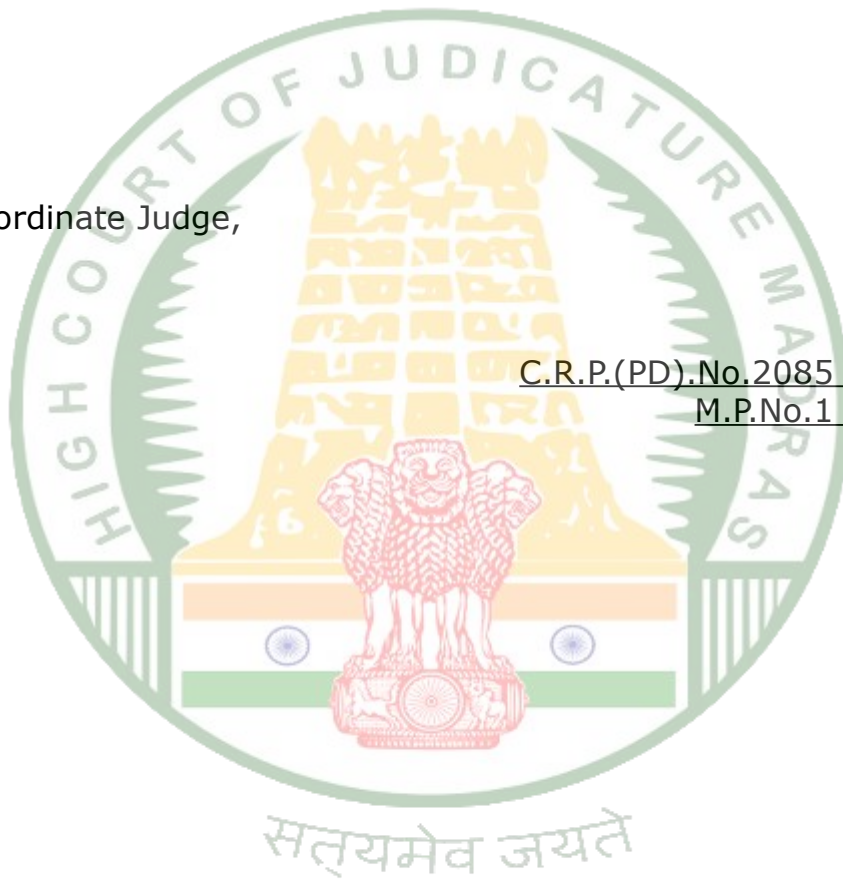
24.08.2017

**V.M.VELUMANI, J.**

gsa

To

The Subordinate Judge,  
Mettur.



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