

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.1023 of 2015

and

M.P.No.1 of 2015

1. M.Munusamy
2. M.Jayaprakash
3. Jayanthi
4. Revathi @ Shanthi
5. Susila

cause title accepted vide order of
Court dated 04.03.2015 made in
M.P.No.1 of 2015 in C.R.P.Sr.No.9768/15 .. Petitioners

VS

1. Saraswathy
2. Krishnan
3. Veerammal
4. Lalchand
5. Devika
6. Jamuna
7. Minor Vasantha
8. Minor Sumathi
9. Minor Thulasi
- 10.Malliga
- 11.Nagaraj
- 12.Varalakshmi
- 13.Minor Thirunavukarasu
Represented by mother Guardian Malliga
- 14.Rani
- 15.Saroja
- 16.Kalpana
- 17.Sankar
- 18.Sudha

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.11.2009 passed in I.A.No.666 of 2009 in O.S.No.138 of 2004 on the file of the District Munsif Court, Ponneri.

For Petitioners : Mr.N.R.Anantha Ramakrishnan

For Respondents : Mr.R.Krishnaswamy
3,5 to 16 and 18

For Respondents
1,2 and 4 : Served - No Appearance

For Respondent-17 : Not ready in notice

ORDER

The revision petition is directed against the order dismissing an application under Section 45 of the Indian Evidence Act to send the Will dated 15.12.1966 to be compared with the admitted signature found in other documents.

2. The suit is filed by the plaintiffs for partition. As against the claim of the plaintiffs, the defendants had relied upon a Will dated 15.12.1966 alleged to have been executed by Veeriah Chetty. The entire defence of the defendants is only based on the alleged Will. According to the plaintiffs, the said Will is ante-dated and fabricated

document, as the same was not executed by the said Veeriah Chetty. The said Veeriah Chetty had executed mortgage deeds dated 24.10.1960 and 01.03.1966, which are registered documents and they are subsequently discharged. The plaintiffs claim to be in possession of the document dated 24.10.1960 and the document dated 01.03.1966 is with the respondents / defendants. Therefore, with regard to the truth and genuineness of the Will, the plaintiffs wanted to compare the signature found in the alleged Will with that of the signature found in the above said mortgage deeds.

3. The said application was resisted by the defendants and their main objection is that if the documents are sent outside the Court, it will be lost. As the same should not be sent outside the Court, it is for the expert to come to the Court and verify the document in the Court itself.

4. The trial Court, based on the contentions made by both sides, dismissed the application stating that the burden is only on the defendants, who produced the documents and the application filed by the plaintiffs is not maintainable. The plaintiffs have sought for an expert opinion with respect to the signature found in the Will produced

by the defendants. The only objection by the respondents is that if the Will is taken out of the Court, there is a risk of the same being lost.

5. Order 26 Rule 10A CPC provides for appointment of Commissioner for scientific investigation. When a scientific investigation is required to be conducted in a suit for deciding the dispute between the parties and if the Court decides that the same cannot be done before the Court, it is open to the Court to issue a Commission to such expert to investigate and furnish a report. In order to conduct such specific investigation, the Court has also got power to appoint a Commissioner under Rule 10 A of the Civil Procedure Code. As the scientific investigation contemplated in Order 26 Rule 10A CPC includes report of the Forensic Expert, the Court can appoint a Commissioner / Advocate Commissioner to send the documents to be compared with the other admitted documents and get a report from the Forensic Expert. The Advocate Commissioner, who is an Officer of the Court, has to be given the responsibility of taking the document to an expert and collecting them back from the expert and submit a report to the Court. An Advocate Commissioner appointed by the Court is an Officer of the Court and giving the same to the Commissioner for the said purpose is deemed to be in the

custody of the Court only. Though the petitioners / plaintiffs have asked for only a comparison of the document under Section 45 of the Evidence Act and not for appointment of a Commissioner under Order 26 Rule 10A CPC, the Court has got the power to exercise the same and appoint a Commissioner in this regard on its own. An opinion from the Forensic Expert involves experiments with sophisticated equipments, which cannot be brought to the Court for the said purpose. However, the said reason cannot preclude a party from obtaining an opinion from the expert. With the advancement of science and technology, the Courts can have the assistance and aid of an expert in deciding a particular issue. The experts also cannot be expected to visit all the Courts wherever such requirements is there. It is also to be noted that there are not many Government experts with the facilities in the State. When the services of the Forensic Experts are originally required in criminal matters, the devotion of their time for civil matters is minimum. In such circumstances, it is open to the Court to appoint a Commissioner to obtain a report from Handwriting Expert after scientific investigation.

6. The learned counsel appearing for the respondents/ defendants also contended that the Court has got power to compare

the disputed handwriting / signature with the admitted handwriting / signature and therefore, there is no necessity for sending the document to an expert. But the Hon'ble Supreme Court has repeatedly held that despite the fact that the Court has got the power to record a finding on comparison, even in the absence of an expert's opinion, the Court should hesitate to venture a decision based on its own comparison of the disputed signature with that of the admitted signature. When the Court has to order comparison of the documents containing the disputed signatures only with the signatures found in the admitted documents, no prejudice would be caused to the other side and the admitted signatures should be on contemporaneous documents and not subsequent to the disputed document.

7. In the light of the above discussion, the trial Court should have allowed the application to send the documents for obtaining an opinion of an expert. It is stated that the suit was filed in the year 1988 and got re-numbered in the year 2004. The written statement was filed in the year 2000 and the application itself was filed in the year 2009. However, the revision petition is filed in the year 2015 and there is no progress in the suit till today.

8. Considering the delay caused by the plaintiffs, though the suit is only filed by the plaintiffs, this Court is inclined to allow the application in setting aside the order passed by the trial trial. Accordingly, the Civil Revision Petition is allowed on condition that the plaintiffs/ petitioners pay a sum of Rs.20,000/- (Rupees twenty thousand only) as costs to the defendants within a period four weeks, failing which, the revision petition shall stand automatically dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

23.01.2017

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Index: yes/No

Internet: yes

To

The District Munsif Court,
Ponneri.

PUSHPA SATHYANARAYANA,J.,

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