

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.87 of 2017
and
C.M.P.No.449 of 2017

Chinnasamy

.. Petitioner

Vs.

1. Sulochana
2. Somasundaram
3. Chinnammal

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 20.10.2016 passed in I.A.No.188 of 2016 in O.S.No.130 of 2010 on the file of the Sub-Court, Perundurai.

For petitioner : Mr.A.Sundaravadhanan

ORDER

The first defendant in a suit for partition, is the revision petitioner herein, challenging the order refusing to appoint an Advocate Commissioner to take the Will along with the original partition deed, to the handwriting expert for comparison. Earlier, I.A.No.542 of 2014 was filed by the respondents 2 and 3/defendants 2 and 3, to send the Will executed by the father of the defendants 1 and 2, to an expert. That was allowed and the Will, dated 26.04.2006 was compared and opinion was also given by

the expert. Now, the present application in I.A.No.188 of 2016 is filed by the first defendant stating that the thumb impression contained in the gift settlement deed, dated 07.05.1993, was not very clear and the expert was unable to compare the said document in a befitting manner, and therefore, he is seeking permission of the Court to send the Will again to the expert for comparison of the same with the original partition deed, dated 17.03.1986. The said I.A.No.188 of 2016 was dismissed.

2. When I.A.No.542 of 2014 was filed, the petitioner could have produced the original partition deed, dated 17.03.1986 also for comparison. But now, after the report of the expert has come, the first defendant has filed the present application stating that the thumb impression in both the documents are different, as the one found in the gift settlement deed was not very clear. No doubt, the expert could have asked for few more documents for comparison, when what was furnished to him did not contain the clear thumb impression of the testator. That was not done. At least, the petitioner could have produced the partition deed, dated 17.03.1986 even at that time. Having failed to do so, the second application for the same relief for obtaining the second expert opinion, is not maintainable. However, as the earlier report is now available on file, it is open for the revision petitioner/first defendant to file his objections and if need be, cross-examine the expert in this regard.

3. With the above direction, the Civil Revision Petition is disposed of.

No costs. C.M.P. is closed.

19.01.2017

CS

Copy to

The Sub-Judge, Perundurai.

PUSHPA SATHYANARAYANA, J

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