

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD) Nos.535 of 2014 and 536 of 2014

and M.P.Nos.1 and 1 of 2014

1. Minor M.Pravin
S/o.S.Manoharan
Rep by his Father and Natural Guardian
S.Manoharan

2. S.Manoharan

3. M.Santhi .. Petitioners in both C.R.Ps

Versus

1. K.Babu

2. K.Om.Prakash

3. Kalaiselvi

4. Ramani

5. Sridevi .. Respondents in both C.R.Ps

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the common fair and decretal order passed in I.A.Nos.14765 and 14766 of 2013 respectively in O.S.No.7202 of 2011 dated 10.12.2013 on the file of the learned XIV Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.Suresh Kumar
in both C.R.Ps

For Respondent
in both C.R.Ps : Mr.B.K.Sreenivasan

COMMON ORDER

The suit is filed by the plaintiffs for declaration that the Adoption Deed dated 10.08.2007 is void ab-nitio, invalid and unenforceable in law and for other reliefs.

2. Pending suit, the plaintiffs filed I.A.No.14765 of 2013 to send the original Counter Affidavit dated 19.12.2008 filed in I.A.No.20608 of 2008 in O.S.No.4765 of 2002, which contains admitted original signatures of Mr.K.Kamalanathan and the certified copy of the Adoption Deed dated 10.08.2007, marked as Ex.A.5 in the present suit, which contains the disputed signatures allegedly made by K.Kamalanathan, to the Director, Forensic Sciences Department, Mylapore, Chennai 600 004, directing him/her to compare the above said admitted signatures of K.Kamalanathan contained in Counter Affidavit dated 19.12.2008 filed in I.A.No.20608 of 2008 in O.S.No.4765 of 2002 with the disputed signatures allegedly made

by K.Kamalanathan contained in Ex.A5-Adoption Deed and render his opinion on the same.

3. Pending suit, the plaintiffs have also filed I.A.No.14766 of 2013 to appoint an Advocate Commissioner to receive the original counter affidavit filed in I.A.No.20608 of 2008 in O.S.No.4765 of 2002 and certified copy of the Adoption Deed dated 10.08.2007, marked as Ex.A5 in the present suit and submit the same to the Director, Forensic Sciences Department, Mylapore, Chennai to obtain opinion for the purpose of proper adjudication of the suit.

4. Both the above said applications were allowed. Aggrieved by the same, the above revision petitions have been filed by the defendants.

5. It is stated by the learned counsel for the revision petitioners/defendants that a certified copy of the Adoption Deed cannot be sent to an expert for comparison of signatures, as it will not be safe to testify the signatures of the xerox copy or certified copy. The only

admitted signatures during the relevant point of time can be sent to an expert of the Forensic Sciences Department for comparison.

6. It is submitted by the learned counsel for the revision petitioners/ defendants that the original of the said Power of Attorney dated 10.08.2007 is in the custody of the defendants. The counter affidavit referred to in the application filed in support of I.A.No.14766 of 2013 is also not marked as document before the Court. It is stated by the learned counsel for the defendants that on the same date of execution of the Adoption Deed, a Power of Attorney was also executed, which contains the signatures to be compared with. It is also admitted by the learned counsel for the revision petitioners/defendants that neither the Power of Attorney dated 10.08.2007 nor the Counter Affidavit filed in I.A.No.20608 of 2008 dated 19.12.2008 are marked as documents before the Court. The said documents are now sought to be sent to an expert for comparison of the signatures with the certified copy of the Adoption Deed.

7. The only question that arises for consideration is as to whether

allowing the application to send the documents for expert opinion, can be sustained.

8. It is settled principle that while comparing the signature, only the signature obtained in the earlier point of time, before the execution arose, has to be taken into consideration. The signatures, which are found in the documents subsequent to the filing of the suit, cannot be compared or sent to the expert for the same. In this case, the endeavour of the plaintiffs is to prove the Adoption Deed dated 10.08.2007, which is in the custody of the defendants. The learned counsel for the defendants fairly admits that he will produce it before the Court and mark the same. Once the Adoption Deed is marked by the defendants, the Power of Attorney dated 10.08.2007 also may be produced by the defendants and mark it as document. Similarly, the plaintiffs are also directed to mark a copy of the counter affidavit dated 19.12.2008, which is already produced along with the application as document. Once these documents are marked as Exhibits, the Commissioner already appointed may collect the same and produce them before the Forensic Sciences Department, Mylapore, Chennai and after completion of the examination by the expert, receive

the report in a sealed cover and produce it before the Court. It is made clear that the said Power of Attorney and the Counter affidavit to be produced by the defendants and the plaintiffs respectively have to be marked as documents and also the defendants have to produce the original Adoption Deed from his custody and mark the same. Thereafter, the documents can be taken to the expert as indicated above.

9. With the above directions, the Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10.01.2017

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To

The XIV Assistant City Civil Court,
Chennai.

PUSHPA SATHYANARAYANA.J

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