

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(PD) No.2066 of 2013 and
M.P.No.1 of 2013

1.M.Manohar
2.M.Ashokan
3.M.Ravichandran
4.M.Ramesh

.. Petitioners

Vs

1.Thara
2.Asha
3.K.Anuradha
4.M.Suresh

.. Respondents

PRAYER: Revision petition against the order and decretal order dated 25.02.2013 passed in I.A.No.1287 of 2013 in O.S.No.4522 of 2008 on the file of the III Assistant Judge, City Civil Court, Madras.

For Petitioners

: Mr.M.Udayaraj

For Respondents

: Mr.Asif Ali
for 1st respondent

Mr.Badrinath
for 3rd respondent

ORDER

This revision is filed by the petitioners herein, who are defendants 2 to 4 and 6 in the suit filed by the first respondent/plaintiff, challenging the order and decretal order dated 25.02.2013 passed in I.A.No.1287 of 2013 in O.S.No.4522 of 2008 on the file of the learned III Assistant City Civil Court Judge, Madras.

2. The facts in a nutshell are as under: The first respondent/plaintiff filed the suit, being O.S.No.4522 of 2008, seeking partition and separate possession of her 1/8th share in the suit property. She also sought for appointment of an Advocate Commissioner to inspect the suit property and to ascertain the first respondent/plaintiff's 1/8th share in the suit property.

3. The plaintiff and defendants 1 to 6 are siblings and the 7th defendant is grand daughter of the plaintiff. The said suit was strongly resisted by defendants 2 to 6. The defendants 2 to 6 filed an application, being I.A.No.1287 of 2013, specifically pleading that the partition suit is not maintainable and that their mother had

bequeathed the schedule mentioned property by a Will dated 19.01.1979 (which is stated to be unregistered) in favour of defendants 2 to 6. The defendants 2 to 6 produced Exs.B1 to B4 to prove the signature of the Executor of the Will. The plaintiff tried to disprove the signature of the Executor of the Will. In effect, in the interlocutory application, the defendants 2 to 6 had prayed for an order permitting Exs.B1 to B4 to be sent to the Director, Forensic Science Department, Chennai, for comparing the signatures in exhibits and to ascertain the age of the exhibits to prove the case of defendants 2 to 6 in support of the defence. The said application was resisted by the plaintiff.

4. The Court below, by order dated 25.02.2013, which is challenged in this revision petition, dismissed the interlocutory application.

5. Assailing the said order, the present revision is filed for the relief stated supra.

6. It is the contention of the learned counsel appearing on behalf of the petitioner that the signatures in the Will have to be

compared with the signatures of the Executor in the original revenue tax receipts issued by the Corporation of Madras, Original Identity Slip for encashment of one year National Savings Certificate issued by the Indian Posts and Telegraphs Department and Requisition Letter by the Executor to the Tahsildar (South East) and only on comparison, the suspicion surrounding the Will will be cleared and non sending of such documents for comparison of signatures and for ascertaining the age of the Will, will put the petitioners to irreparable loss and hardship.

7. The learned counsel appearing on behalf of the first respondent/plaintiff submitted that the petitioners have not assigned any reason for having brought to light the Will after 29 years, for the first time when the suit was filed in the year 2008. It is also submitted that the legatee cannot establish his right under the Will in a Court of Law without obtaining a probate. In any event, it is contended that when the execution of the Will itself is in dispute and not proved, there is no necessity to examine the signature in the other exhibits with that on the Will.

8. I heard Mr.M.Udayaraj, learned counsel for the

petitioners, Mr.Asif Ali, learned counsel for the 1st respondent and Mr.Badrinath, learned counsel for the 3rd respondent and perused the documents available on record.

9. In the case on hand, the alleged Will is dated 19.01.1979 and the same is unregistered and unprobated. Therefore, the marking of such document itself is in serious dispute. That apart, the said Will came to light only in the year 2008, i.e., after over 29 years, and was never acted upon.

10. The fact that no application has been filed for probate of the Will is admitted by D.W1. It is categorically recorded in the order passed by the Court below that the defendants themselves are not trusting the validity of the Will.

11. It is trite that it is within the judicious discretion of the Court, depending on the facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872.

12. However, for exercising such judicious discretion, the petitioners should have satisfied the Court below with some cogent evidence regarding the execution of the Will. The Court below categorically recorded that the defendants who marked the documents were themselves not sure about the validity of the Will. When such is the position and moreover the Will is an unregistered will, which is also not probated, as rightly held by the Court below, this Court finds no justification in sending the documents for comparison by expert.

13. In my considered view, there is no point in sending to an expert the documents of doubtful nature and character and add one more piece of unreliable evidence and burden the records by wasting the time and money of the parties. When the petitioners themselves are not sure about the validity of the Will, any opinion obtained from a expert on such material is not going to be of any help to the trial Court in effectively adjudicating the lis, more so, in the light of the settled legal proposition that expert's opinion as to handwriting or signatures can rarely take the place of substantive evidence.

14. For the foregoing reasons, this Court finds no reason to interfere with the order passed by the Court below.

15. In the result, the civil revision petition is dismissed. No costs. Consequently, M.P.No.1 of 2013 is closed.

27.01.2017

Note: Issue order copy on 08.05.2018
vs

Index : Yes
Internet : Yes

To

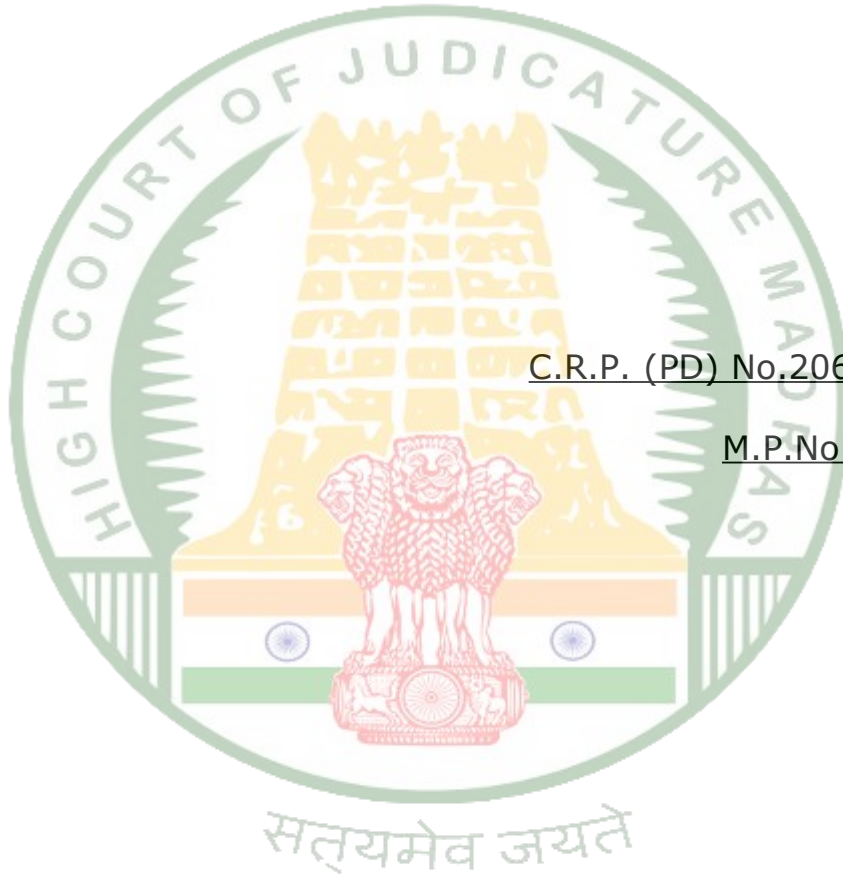
The III Assistant Judge,
City Civil Court,
Madras.



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M.V.MURALIDARAN, J.

VS



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