

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(PD).No.2760 of 2016

Ponnambala Swamy Mutt
@ K.C.T.Madalayam
Rep. by its Madathipathi,
Meyappa Gnana Desiga Swamigal,
Koviloor Madam, Koviloor,
Karaikudi, Sivaganga District.

.. Petitioner

Vs.

A.Ramadoss

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.186 of 2012 in O.S.No.332 of 2008 dated 29.04.2016 on the file of the Court of Additional District Munsif, Chidambaram.

For Petitioner : Mr.A.Muthukumar

For Respondent : Prof.S.Krishnaswamy

ORDER

The learned counsel for the petitioner submitted that the petitioner has filed an application under Order 26 Rule 10(A) and 10(B) and

Section 151 C.P.C., in I.A.No.186 of 2012 in O.S.No.332 of 2008 dated 20.04.2016 before the Court of Additional District Munsif, Chidambaram, to send for Exs.A1 and A2 and also other documents executed by Kasi Viswanatha Swamigal during the regular course of his administration of the defendant Mutt till his death, to the Handwriting and Signature Expert at Government Forensic Laboratory, Chennai and to appoint an Advocate Commissioner to take the original documents to the Forensic Laboratory Department, Government of Tamil Nadu at Chennai. In the aforesaid application, the respondent/plaintiff herein has filed counter contending that the said application has been filed only to prolong the case, hence the said application is liable to be dismissed. By considering the contention of both parties, the court below has dismissed the said application by holding that the burden of proof lies on the respondent/plaintiff to prove his case. Therefore, the said application was dismissed. Challenging the aforesaid order, the revision petitioner has filed the present civil revision petition before this Court.

2. According to the learned counsel for the petitioner, the respondent herein has also filed an application in I.A.No.138 of 2016 in I.A.No.186 of 2012 under Order VII Rule 14 CPC. Contending that though the burden of proof lies with the respondent/plaintiff however in the case on hand, the plaintiff has filed the report issued by the private expert. Therefore,

the onus of the proof lies on the petitioner/defendant to prove his case. Therefore, it is necessary that the application has to be allowed and the order passed by the court below is liable to be set aside.

3. Per contra, the learned counsel for the respondent would submit that the respondent/plaintiff already obtained the report from the private expert and further contended that the petitioner has filed the present application for protracting the trial in the said suit and therefore, the present application is liable to be dismissed.

4. Admittedly, the report obtained by the respondent/plaintiff is from the private expert. Further, Forensic Science Laboratory, Government of Tamil Nadu, Chennai is the competent authority to analyse the signature and issue report and no prejudice would be caused to the respondent, if the documents are analysed by the qualified expert in Forensic Science Department, who is competent to analyse the signature available in the documents and to submit a report to the Court.

5. In the facts and circumstances of the case and in the interest of justice, this Court accepted the contention of the revision petitioner and to determine the issues involved in the present suit, Exs.A1 and A2 and other

documents shall be sent to the Forensic Science Laboratory, Government of Tamil Nadu, Chennai for analyses of the signatures available in the documents and submit a report to the Court below. Hence, the order passed by the trial court is liable to be set aside.

6. Accordingly, Civil Revision Petition succeeds and the same stands allowed. No costs. Further, the trial court is directed to pass appropriate orders by fixing time to submit a report by the laboratory. Both parties undertakes, that they will cooperate to dispose the said suit, as expeditiously as possible.

15.11.2017

Index: Yes/No

Speaking Order/Non-Speaking Order

ssn

सत्यमेव जयते

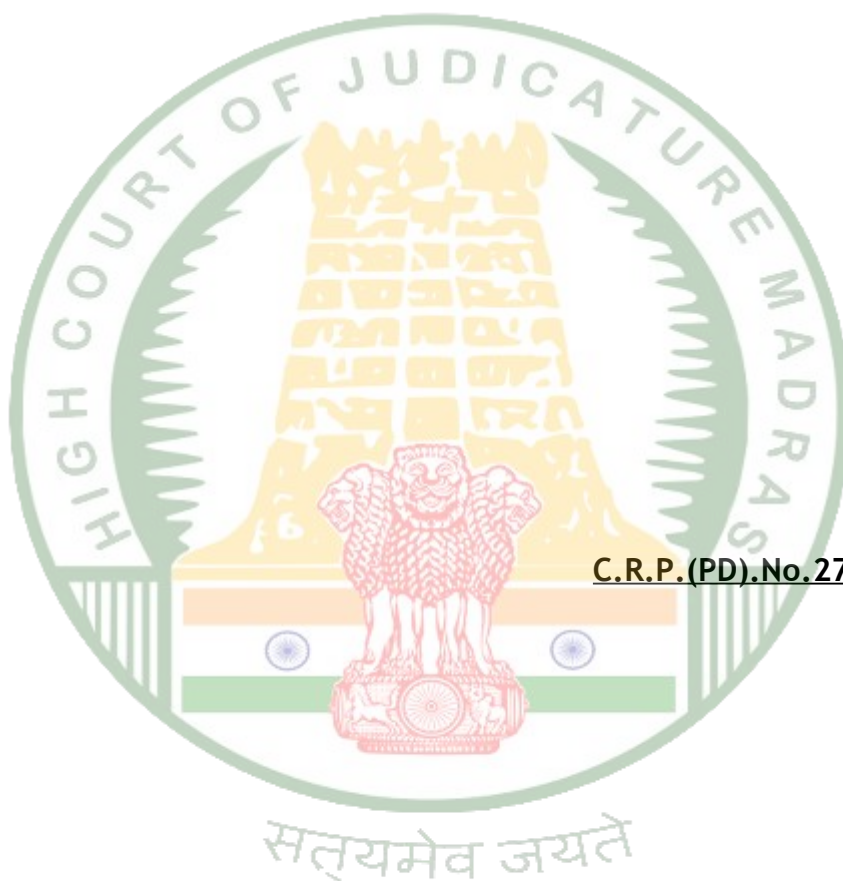
To

The Additional District Munsif,
Chidambaram.

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D. KRISHNAKUMAR, J.,

ssn



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