

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.02.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

CRP PD Nos.2958 and 2959 of 2016

1. Vasantha
Mariyammal (Died)
2. Kalaiarasi .. Petitioners in C.R.P.P.D.No.2958 of 2016

1. Vasantha
Mariyammal (Died)
2. Kalairasi
3. Shanmugam
4. Babu
5. Natarajan
6. Indumathi
7. Suganya Devi ...Petitioner in C.R.P.P.D.No.2959 of 2016

VS

Kanagasabai .. Respondent in both C.R.Ps

Prayer in C.R.P.P.D.No.2958 of 2016

Civil Revision Petition filed under Article 227 of the Constitution of India against the order made in un-numbered I.A.No./2016 in I.A.No.618 of 2015 in O.S.No.26 of 2005 on the file of the Subordinate Judge Court at Chidambaram seeking to set aside

the ex-parte order dated 17.12.2016 thereby closing the said I.A. filed by the plaintiff seeking to send for documents in order to obtain finger print expert opinion.

Prayer in C.R.P.P.D.No.2959 of 2016

Civil Revision Petition filed under Article 227 of the Constitution of India against the order made in I.A.No.618 of 2015 in I.A.No.59 of 2008 in O.S.No.26 of 2005 on the file of the Subordinate Judge Court, Chidambaram dated 14.12.2015 thereby closing the said I.A. filed by the plaintiff seeking to send for documents in order to obtain finger print expert opinion.

For Petitioner : Mr. V.Ayyadurai, Senior Counsel
in both C.R.Ps for Mr.V.B.Perumal Raj

For Respondent : Mr.A.Muthukumar
in both C.R.Ps

COMMON ORDER

The defendants are the revision petitioners.

2. The plaintiff is the paternal uncle of the first and third defendants. The other petitioners are the legal heirs of the deceased sister of the first and second petitioners. The plaintiff had

filed O.S.No.26 of 2005 for partition and separate possession of 1/4th share of the suit schedule properties based on a Will dated 09.11.2004 said to have been executed by one Panneerselvam, who is the father of the petitioners 1 and 3.

3. The plaintiffs were examined as P.W.1 and documents Ex.A1 to A51 were marked. The defendant was examined as D.W.1 and Ex.B1 to Ex.B30 were marked. Ex.B.30 is the money order containing the left thumb impression of the deceased Panneerselvam. The defendants had taken out an application in I.A.No.59 of 2008 to compare the thumb impression of Panneerselvam found in Ex.A1 with Ex.B.30, which was allowed and an opinion was also obtained from the expert. In a Civil Revision Petition in C.R.P.No.4096 of 2008 filed challenging the said order, the order was modified and the learned trial Judge was directed to send the document Ex.A1 as well as Ex.A52, which is an application for opening an account in a bank for comparison. Against the said order, S.L.P was filed and the same was disposed of, with an

observation that while considering the matter on merits, both the reports of the two finger print experts, may be taken into consideration by the trial Court.

4. In the meanwhile, the plaintiff filed I.A.No.618 of 2015 to send for the original withdrawal form dated 06.10.2003 and 04.11.2003 with respect to the bank account maintained by the testator for the purpose of comparison. The said I.A.was allowed on 14.12.2015, as no counter was filed and directed payment of copying charges. On payment of such charges, I.A was closed. Therefore, the defendants filed un-numbered I.A.in I.A.No.618 of 2015 on 20.01.2016 seeking to set aside the order passed on 05.01.2016. The said un-numbered application was returned on the ground of maintainability. Aggrieved by the return of un-numbered application seeking to set aside the ex-parte order dated 05.01.2016, C.R.P.(P.D) No.2958 of 2016 is filed. Aggrieved by the docket order dated 14.12.2015, C.R.P.(P.D).No.2959 of 2016 is filed.

5. Heard the learned counsel appearing for the petitioners

and the learned counsel appearing for the respondent and perused the materials available on record.

6. The only complaint of the revision petitioners is that the documents are not marked and they cannot be sent to the expert for comparison.

7. The withdrawal slip was called for, for the purpose of comparison for the reasons that the left thumb impression of the testator was not very clear on the account Form-B52. It is now agreed that the withdrawal slip be formally marked and received in evidence, after which, the same may be sent for comparison with the Will dated 09.11.2004.

PUSHPA SATHYANARAYANA,J.,

srn

8. With the above observation, the Civil Revision Petitions are disposed of. No costs.

13.02.2017

srn

To

The Subordinate Judge,
Chidambaram

CRP PD Nos.2958 and 2959 of 2016

<http://www.judis.nic.in>