

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.507 of 2013

M.P.No.1 of 2013

D.Sangeetha

.. Petitioner

Vs.

1.Minor Naveena
2.Minor Samyutha
3.S.Periyammal
4.S.Chinnusamy
5.C.Madesh
6.K.Sri Devi
7.S.Viswanathan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 23.11.2012 made in I.A.No.1036 of 2011 in O.S.No.230 of 2011 on the file of the Second Additional District Court, Erode.

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For Petitioner : Mr.N.Manokaran

For R1 and R2 : Mr.M.Sunil Kumar

For R3 to R7 : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 23.11.2012 made in I.A.No.1036 of 2011 in O.S.No.230 of 2011 on the file of the Second Additional District Court, Erode.

2. The petitioner is the 6th defendant, respondents 1 and 2 are the plaintiffs and respondents 3 to 7 are the defendants 1 to 5 in O.S.No.230 of 2011 on the file of Second Additional District Court, Erode. The respondents 1 and 2 filed the suit for declaration that the respondents 1, 2, 5 and 6 are the absolute owners of the suit property based on the Will dated 30.11.2001 executed by their deceased grand father, Sellappa Gounder and for permanent injunction restraining the petitioner from trespassing into the suit property. The petitioner filed written statement on 29.07.2011 and is contesting the suit. The petitioner also filed I.A.No.1036 of 2011 for comparing the disputed signature of deceased Sellappa Gounder found in the Will dated 30.11.2001 and send the admitted signature of deceased Sellappa Gounder to the Forensic Department for getting opinion of handwriting expert. According to the petitioner, the respondents entered into an agreement of sale dated 03.10.2010 to sell the suit property for a total sale

consideration of Rs.1,07,00,000/- and received a sum of Rs.25,00,000/- as advance. Subsequently, she made improvement by spending Rs.10,00,000/-. She also paid another sum of Rs.5,50,000/- towards further advance and seventh respondent, father of the respondents 1 and 2 received the said amount on behalf of the respondents 1 and 2 and extended time for execution of sale deed by another 45 days from 15.03.2011 and made an endorsement on the back side of the agreement of sale. According to the petitioner, she issued a notice dated 20.04.2011 to the respondents and others calling upon them to execute the sale deed as per the agreement of sale dated 03.10.2010. The respondent sent a reply dated 25.04.2011 making false and vexatious allegations. The petitioner filed O.S.No.70 of 2011 on the file of Principal District Judge, Erode for a specific performance based on the agreement of sale dated 03.10.2010 against all the respondents. In order to defeat the interest of the petitioner, the respondents have colluded together and fabricated a forged Will alleged to have been executed by the deceased Sellappa Gounder and respondents 1 and 2 filed the present suit.

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3. The respondents 1 and 2 filed counter affidavit and submitted that they were not aware of the alleged notice dated 20.04.2011. They denied that respondents have colluded together and created a Will dated 30.11.2011

upon which they filed the present suit. As per Section 73 of Indian Evidence Act, the Court has power to compare the signature and there is no necessity for the Court to send the Will, seeking for the opinion of the hand writing expert and also submitted that petitioner has not produced any document containing the admitted signature of the deceased Sellappa Gounder of the relevant period for comparison.

4. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, dismissed the application on the ground that petitioner has not filed and mentioned any document containing the admitted signature of the deceased Sellappa Gounder for comparison.

5. Against the said order dated 23.11.2012 made in I.A.No.1036 of 2011 in O.S.No.230 of 2011, the present Civil Revision Petition is filed by the petitioner.

6. The learned counsel appearing for the petitioner contended that the petitioner filed I.A.No.337 of 2012 to send for the copy of the agreement of sale dated 23.09.1998 entered among Sellappa Gounder and others, which is registered as document No.1133 of 1998 on the file of the Sub Registrar of Sivagiri and in the custody of Sub Registrar of Sivagiri and cancellation of

sale agreement on 05.07.1999 which is registered as document No.879 of 1999 on the file of the Sub Registrar of Sivagiri which is in the custody of Sub Registrar of Sivagiri. The said application was allowed by the order dated 15.09.2012 and petitioner was directed to deposit a sum of Rs.1000/- being send for charges on or before 28.09.2012 and application was adjourned to 01.10.2012. The petitioner deposited the said amount and documents were sent for and the said documents were available in the Court when the learned Judge dismissed the application I.A.No.1036 of 2011 on 23.11.2012 on the ground that petitioner has not filed any document containing the admitted signature. The learned counsel for the petitioner produced the copy of the order dated 15.09.2012 allowing the I.A.No.337 of 2012 to send for the documents.

7. The learned counsel appearing for the respondents 1 and 2 submitted that the vakalat filed by the respondents 1 and 2 was returned. One Mohan, Advocate represented respondents 1 to 7 and submitted that agreement of sale dated 30.10.2010 is a created one and is not binding on the respondents. The seventh respondent did not receive any additional advance on behalf of the respondents 1 and 2 and did not make any endorsement extending the time for completion of transaction. The paternal grand father of respondents 1 and 2 and respondents 5 and 6 has executed a

Will dated 30.11.2001, bequeathing the property to the third respondent for life and there after to the respondents 1 and 2 and respondents 5 and 6. The said Will is genuine one. The petitioner has not mentioned any documents containing the admitted signature of Sellappa Gounder. No document containing the admitted signature of Sellappa Gounder is available and petitioner is not willing to disclose whether he is going to examine the attesting witness and scribe of the agreement of sale dated 03.10.2010. The two documents sent for by the petitioner from the Sub Registrar Office, Sivagiri are not original documents. They are only certified copy of the documents in the office of Sub Registrar, Sivagiri. The signature in xerox copy is not a valid one for comparison and for obtaining opinion from the hand writing expert. In support of his contentions, the learned counsel appearing for the respondents 1 and 2 relied on the following judgments:

(i) ***In C.R.P.No.57 of 2008, S.Chinnathai Vs. K.C.Chinnadurai:***

"18. However, on a consideration of the above said legal position, the following principles emerge for consideration:

"7. When a document is sent to an expert it should be sent only to the Government Department Expert and not to a private Expert. While sending a document to an expert, the original of the same has to be sent since it is not possible to compare the xerox copies with the other admitted documents."

.....”

(ii) ***In C.R.P.No.1518 of 2015, A.VivekAnand Vs. K.Padmanaban and another:***

“11. So, the finding of the Trial Court that Ex.A5, certified copy of the document is sufficient for comparison is illegal and unsustainable and the same is liable to be set aside. The next reasoning given by the Trial Court for dismissing the application viz., the signature of the 1st defendant which is found in his vakalat and written statement can be compared is also unsustainable because as per the dictum of the Hon'ble Apex Court, the admitted signature in the contemporary period has to be taken into account for comparison.”

8. Heard the learned counsel appearing for the petitioner, respondents 1 and 2 and perused the materials available on record and considered the judgments relied on by the learned counsel appearing for the respondents 1 and 2.

9. From the materials on record, it is seen that the petitioner is seeking to obtain opinion from hand writing expert in respect of the signature of the Sellappa Gounder contained in the Will dated 30.11.2001. The petitioner has not produced any contemporary documents containing admitted signature of

Sellappa Gounder. She has filed I.A.No.337 of 2012 to send for the two documents from the office of the Sub Registrar Office, Sivagiri that is the registered agreement of sale executed by Sellappa Gounder and registered cancellation deed cancelling the said agreement of sale. Both the documents were called for and are available in the Court. The learned Judge has committed an irregularity in dismissing the I.A.No.1036 of 2011 on the ground that petitioner has not mentioned the details of document containing the admitted signature of Sellappa Gounder. The learned Judge failed to take note of the fact that the petitioner filed I.A.No.337 of 2012 to send for the document from Sub Registrar Office, Sivagiri. At the same time, the contention of the learned counsel for the respondents that those documents are not original documents and they are only certified xerox copies and opinion from hand writing expert cannot be obtained by comparing the signature in xerox copy with the disputed signature has considerable force. It is rightly pointed by the learned counsel for the respondents that original document will be handed over to the parties after registration. Admitted signature in original contemporaneous document only can be compared with disputed signature for obtaining opinion from hand writing expert. In the present case, both the documents sent for from Sub Registrar, Sivagiri are xerox copies. Xerox signature cannot be compared with disputed signature to find out the genuineness of signature found in the Will dated 30.11.2001. In

view of the fact that the petitioner is seeking to obtain opinion from Hand writing expert by comparing the signature in the xerox copy, this Civil Revision Petition is liable to be dismissed as devoid of merits.

10. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

24.10.2017

Index : Yes/No
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To

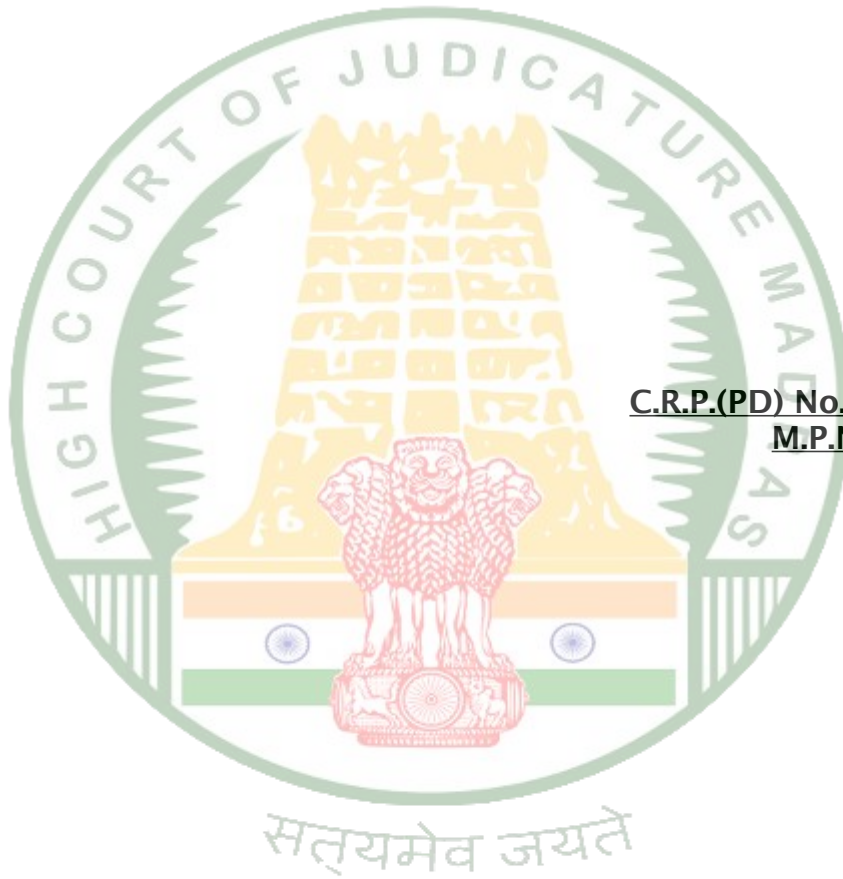
The Second Additional District Judge,
Erode.



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V.M.VELUMANI, J.

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