

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD)No. 12 of 2018

Narayanan

.. Petitioner

Vs

1) Vasantha

2) Subashini

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal Order in I.A.No.1119 of 2017 in I.A.No.1118 of 2016 in O.S.No.223 of 2016 dated 08.12.2017 on the file of Principal District Munsif, Tirukoilur.

For Petitioner : Mr.N.Suresh

For Respondents: Mr.S.Saravanakumar

ORDER

The respondent in O.S.No.223 of 2016 before the Court below, filed for permanent injunction against the petitioner from alienating the suit properties to third parties and the afore said petitioner has filed an application in I.A.Nos.1118 of 2016 under Order XXXIX Rule 1 & 2 of C.P.C. The respondents filed an application in I.A.No.1119 of 2017 to verify the signature found in the document alleged to be executed by

the father of the aforesaid petitioner in favour of the petitioner/plaintiff to the expert opinion for comparison of the signature of the said will executed. The Court below, without appreciating the case of the petitioner, dismissed the said application. Aggrieved by the Order of the Court below, the petitioner has filed the present Civil Revision Petition.

2. In the aforesaid O.S.No.223 of 2016, the respondents / defendants have filed an I.A.No.1119 of 2017 for comparison of the signature of the alleged will dated 24.02.2015. The said application was allowed, against the order, the revision petitioner has filed the present revision petition before this Court.

3. Learned counsel appearing for the respondents would submit that the petitioner denied the said allegations of the execution of will and further filed instant application before the Court below to disapprove the signature in the alleged will, by having an expert opinion from the forensic science department.

4. Considering the facts and circumstances of the case and the submissions made by both the counsels of the parties, an application

has been filed for the comparison of the genuineness of the signature in the will executed by the father of the petitioner.

5. In the light of the judgment of the Hon'ble Supreme Court, reported in **(2009) 7 MLJ 908** in the case of ***P.Stanley Buck vs D.Govindaraj***, it is held that, "the first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative. The burden on the plaintiff to prove the document to be true". Therefore, following the said judgement, in the case of ***P.Sood & Co vs Peerchand Misrimalji Bhansali*** reported in **(2005) 2 MLJ 603**, it is held that, "when the defendant denied the signature in particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps to ascertain the genuineness of the disputed signature by sending the document to the hand writing expert."

6. In the light of the above decisions of the Hon'ble Supreme Court, it is the duty of the plaintiff to prove the genuineness of the will in this suit. Therefore, the orders passed in the application is liable to be set aside.

D. KRISHNAKUMAR J.,

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7. In view of the facts and circumstances of the case, the impugned order passed in I.A.No.1119 of 2007 in I.A.No.1118 of 2016 in O.S.No.223 of 2016 is set aside and the **Civil Revision Petition stands Allowed**. No costs.

05.02.2018

Index: Yes/ No
Internet : Yes /No
Speaking Order / Non-Speaking Order

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To

The Principal District Munsif,
Tirukoilur.

Order in
CRP(PD)No. 12 of 2018

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