

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD) No.1591 of 2018

&

C.M.P.No.8636 of 2018

Srinivasan

... Petitioner

Vs.

1. Senthamizhiselvi
2. Mayilazhagan
3. Chitra
4. Maduram
5. Selvapathi
6. Arulalan
7. Kalaighanam

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.178 of 2018 in O.S.No.30 of 2015 dated 09.03.2018 on the file of the Court of Additional District Munsif, Tirupattur, Vellore District.

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For Petitioner

: Mr.A.Muthukumar

ORDER

The relief sought for in this revision petition is to set aside the fair and decretal order made in I.A.No.178 of 2018 in O.S.No.30 of 2015 dated 09.03.2018 on the file of the learned Additional District Munsif, Tirupatur, Vellore District.

2. The petitioner has filed the suit in O.S.No.30 of 2015 before the learned District Munsif, Tirupattur for declaration and permanent injunction.

3. During trial, the petitioner filed an Interlocutory application under Section 65(2) of the Indian Evidence Act in I.A.No.178 of 2018, to mark the xerox copy of the Will stating that he has filed an original of the Will, along with plaint which was marked as Ex.A3.

4. The main contention of the learned counsel appearing for the petitioner is that in Ex.A3 document, the signature and attestation have been erased by water and therefore the petitioner seeks permission of the Court to file the xerox copy of the Will to be marked.

5. The trial Court refused to mark the xerox copy of the Will as Ex.A3 stating that the petitioner has not complied with Section 65(2) of Evidence Act. Hence, the trial Court dismissed the application in I.A.No.178 of 2018 in O.S.No.30 of 2015.

6. Aggrieved against the said order dated 09.03.2018, the petitioner is before this Court by way of this Revision petition.

7. It is settled law that the Will has to be proved in the manner known to law. Since the petitioner has filed the original Will itself, the Will can be proved as per Sections 68 and 69 of the Indian Evidence Act, which speak about proving of Will. Admittedly, in this case, the attestors have not been summoned and examined. Only the respondent/beneficiary of the will was examined and he is yet to be cross-examined. In this case, examining the attestors of the Will are not done. However, non examination of attested witnesses is fatal to the case of the Revision petitioner.

8. Therefore, in these circumstances, there is no illegality or irregularity in the order passed by the trial Court. However, it is made clear that after

P.VELMURUGAN, J.,

vum

examining the witnesses if necessary, the petitioner is at liberty to file an application on a later stage, if he chooses to do so.

9. With the above observations, this Civil Revision petition is disposed of. Consequently, the connected Miscellaneous petition is closed.

05.06.2018

Index:Yes/No
Speaking order / Non speaking order
vum

To
The Additional District Munsif,
Tirupattur, Vellore District.

C.R.P.(PD)No.1591 of 2018

and

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