

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP(PD).No. 3057 of 2015 and

C.M.P.No. 1 of 2015

1. M. Nallammal
2. V. Pavathal
3. S. Thulasiammal @ Thulasimani
4. B. Pushpalatha
... Petitioners

Vs.

1. Padmavathi
2. Tamilselvi
3. Revathi
4. Sangeetha
5. Deivanai
6. Subramani
7. Jothi
8. Tailor Manikandan
9. Marayammal
10. Thenmozhi
11. Vasanthi
12. Mani
13. Sundaram
14. Friends Screen Printers
Karur bye pass road
Moolagoundampalam Privu, Erode-2 ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 23.06.2015 in I.A.No.194 of 2015 in I.A.No.542 of 2014 in O.S.No.59 of 2003, on the file of the learned Second Additional District Judge, Erode.

For Petitioners : M/s. N. Manokaran

For Respondents : Mrs. Zeenath Begum
1 to 4

O R D E R

The Mother/Testator of the petitioner filed a suit against the respondents/defendants. During the pendency of the suit, the Testator died. After the decree, the mother of the revision petitioner has filed the suit against the respondents/defendants and the same was partly decreed against which the plaintiff has filed an appeal before this Court in A.S.No.170 of 2016. This Court in A.S.No.170 of 2006 setting aside the judgment and decree in O.S.No.59 of 2003 as well as the order passed in I.A.No.409 of 2004 and the matter is remitted back to the Trial Court. The revision petitioner has filed an Interlocutory Application in I.A.No.542 of 2014. During the pendency of the suit, the mother of the plaintiff executed a Will. Therefore, the petitioner wanted to send the Will for getting expert opinion. That application was dismissed by the trial court. Being aggrieved by the order passed by the Trial Court, the petitioner has filed the present revision.

2. The learned counsel appearing for the petitioner would submit that during the pendency of the suit, the mother of the plaintiff died. Therefore, the mother of the petitioner has executed the Will and the Will has got to be proved. Therefore, the respondents disputed the Will. Hence, the Will has got to be sent for getting expert opinion. Since the respondents denied the execution of the Will, it is necessary to send the disputed Will for getting expert opinion, with an admitted thumb impression found in the document executed by the Testator.

3. The learned counsel for the respondents would submit that the respondents denied the very genuineness of the Will itself, and the genuineness of the Will has got to be proved in the suit not by way of filing this application. Therefore, there is no perversity in the order passed by the trial court and there is no reason to interfere with the order passed by the trial court.

4. Heard both sides and perused the records.

5. Admittedly, the revision petitioner has filed the suit against the respondents and the same was partly decreed. Therefore, she filed appeal in A.S.No.170 of 2006 before this Court. This Court setting aside the judgment and decree passed by the trial court and the matter was remitted back to the trial court to dispose of the suit in accordance with law.

6. At that time the petitioners have filed an Interlocutory Application in I.A.No.542 of 2014 to send

the Will for getting expert opinion.

7. During the pendency of the suit, the mother of the petitioners executed a Will in favour of the petitioners. The trial court has gone into the merits of the case. Though in this case, at the time of filing the suit, there was no Will at all, the suit is not based on the Will. Only during the pendency of the suit, admittedly, the mother of the petitioners executed the Will in favour of the petitioners.

8. It is well settled law that the Will has got to be proved in the manner known to law but not through expert opinion, without examining attestors to the Will before the Court to prove the Will. It is premature to file the application to send the disputed Will for getting expert opinion.

9. Therefore, under these circumstances, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

10. The learned counsel for the petitioners would submit that they have filed an application to bring the LR in I.A.No.542 of 2014 that is pending and the application in I.A.No.194 of 2015 which was dismissed by the learned II Additional District Judge, Erode. Therefore, the trial Court is directed to dispose the Interlocutory Application No.542 of 2014 within one month from the date of receipt of a copy of this order and thereafter, the trial court is directed to dispose of the suit in accordance with law, within a period of six months from the date of disposal of I.A.No.542 of 2014.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

msm

To

The Additional District Judge-II, Erode.

+1cc to Mr.N.Manogaran, Advocate SR.No. 49152

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ASK(03/10/2018)