

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.918 of 2015
and M.P.No.1 of 2015

1.Lakshmi
2.Murali

.. Petitioners

Vs.

1.Gajendran
2.Sivakumar
3.Delhi Babu

.. Respondents

(3rd respondent has been declared as civil dead as per the decree dated 21.06.2011 passed in O.S.No.7720/2010 on the file of the XII Assistant City Civil Court, Chennai. Hence, notice may be dispensed with)

सत्यमेव जयते

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.11.2014 made in I.A.No.385 of 2014 in O.S.No.31 of 2005 on the file of the District Munsif Court, Madurantagam.

For Petitioners : Mr.K.Govi Ganesan

For R1 and R2 : Mr.S.Udaya Kumar

For R3 : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 20.11.2014 made in I.A.No.385 of 2014 in O.S.No.31 of 2005 on the file of the District Munsif Court, Madurantagam.

2. The petitioners are defendants 1 and 2, respondents 1 and 2 are the plaintiffs and third respondent is third defendant in O.S.No.31 of 2005 on the file of the District Munsif Court, Madurantagam. The respondents 1 and 2 filed suit for declaration of title and permanent injunction. After contest, the said suit was decreed. Against the said judgment and decree, the petitioners filed A.S.No.28 of 2010. In the first appeal, the petitioners filed additional document i.e. Koor chit dated 14.02.1968 and marking of the same was objected by the respondents 1 and 2 on the ground that the signature contained in the koor chit is not that of their father and to prove the said contention, the respondents 1 and 2 filed service register of their father dated 31.12.1977 containing signature of their father. The learned Appellate Judge marked both

the documents i.e., koor chit dated 14.02.1968 as Ex.B4 and service register dated 31.12.1977 as Ex.A15. After hearing the appeal, the learned Appellate Judge remanded the matter for fresh trial.

3. The second respondent filed I.A.No.385 of 2014 under Order XXVI Rule 10A of C.P.C., for obtaining handwriting expert's opinion with regard to the disputed signature of his father in the koor chit dated 14.02.1968, which was marked as Ex.B4 with the admitted signature of his father contained in the service register dated 31.12.1977, which was marked as Ex.A15. The petitioners opposed the said application on the ground that Ex.B4 is dated 14.02.1968, while Ex.A15 is dated 31.12.1977, which shows that there is nine years difference between these two documents and prayed for dismissal of the application. The learned Judge allowed the application on the ground that obtaining opinion from the handwriting expert will assist the Court to decide the issue.

4. Against the said order dated 20.11.2014 made in I.A.No.385 of 2014 in O.S.No.31 of 2005, the present Civil Revision Petition is filed by the petitioners/defendants 1 and 2.

5. Heard the learned counsel for the petitioners as well as the respondents 1 and 2 and perused the materials available on record.

6. From the materials available on record, it is seen that admitted signature produced by the respondents 1 and 2 and disputed signature produced by the petitioners are not on contemporaneous period. The disputed signature in Ex.B4/koor chit is dated 14.02.1968 and admitted signature in Ex.A15/service register is dated 31.12.1977.

7. It is well settled that the disputed signature can be compared with contemporaneous admitted signature only. In the present case, there is nine years difference between the disputed signature and admitted signature. The learned Judge failed to consider this fact and also well settled judicial pronouncement on erroneous reason, allowed the application. The learned Judge has not properly exercised his power conferred on him and in view of the above, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside.

8. In the result, the Civil Revision Petition is allowed. No costs.
Consequently, connected Miscellaneous Petition is closed.

18.01.2018

Index:Yes/No

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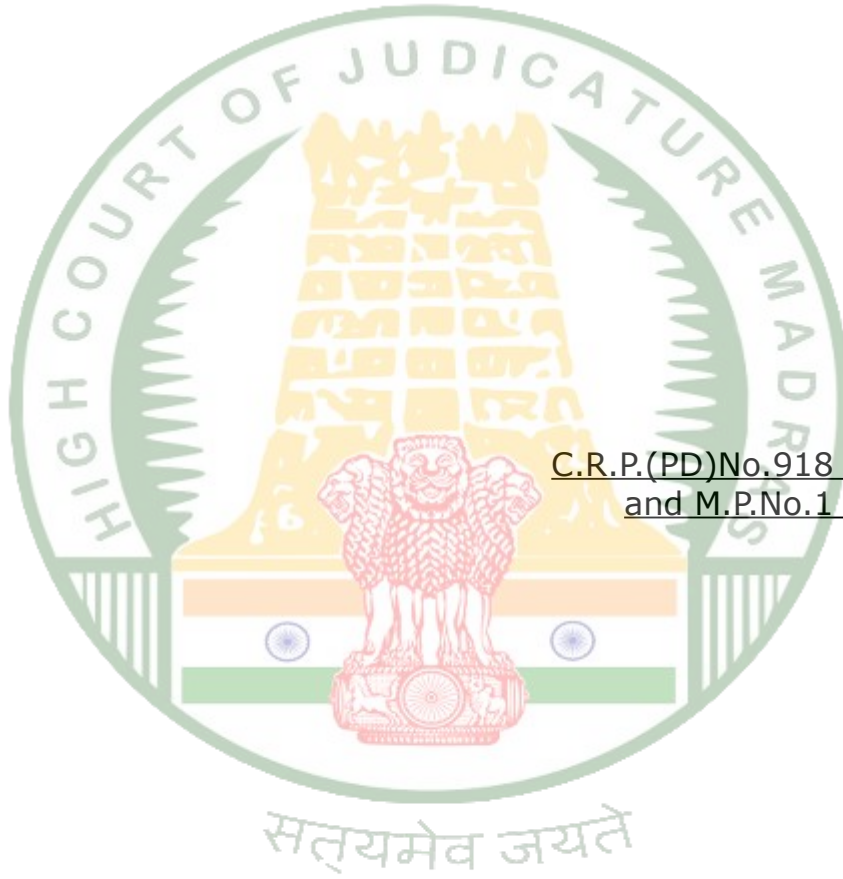
To
The District Munsif, Madurantagam.



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V.M.VELUMANI,J.

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