



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 30.08.2018

DELIVERED ON : 11.09.2018

WEB COPY

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1206 of 2015

and

M.P. (MD) No.1 of 2015

Mahalakshmi

.. Petitioner/Petitioner/Plaintiff

Vs.

1.Adheeswari

2.Lingam @ Annathurai

.. Respondents/Respondents/Defendants

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the order dated 21.04.2015 passed in I.A.No.185 of 2015 in O.S.No.218 of 2014 on the file of the learned Subordinate Judge, Sivagangai and allow the petition seeking to send Ex.B1 and Ex.B2 for expert opinion by comparing both signatures and thumb impressions in those registered documents and find out their genuineness with each other with cost.

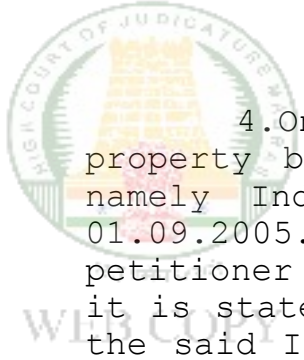
For Petitioner	: Mr.R.A.Mohanram
For Respondent No.1	: Mr.R.Vijaya Kumar
For Respondent No.2	: No Appearance

ORDER

Heard Mr.R.A.Mohanram, learned counsel appearing for the petitioner and Mr.R.Vijaya Kumar, learned counsel appearing for the first respondent.

2.This petition has been filed to set aside the order in I.A.No.185 of 2015 in O.S.No.218 of 2014 dated 21.04.2015 on the file of the learned Subordinate Judge, Sivagangai.

3.The petitioner is the plaintiff in the suit in O.S.No.218 of 2014 and the suit is for permanent injunction. The petitioner herein filed an application in I.A.No.185 of 2015 to compare the signature in Ex.B1 dated 01.09.2005 with the signature and thumb impression in the document dated 05.03.2008 which is marked as Ex.B2 to the hand writing and finger print expert and to get a report. This petition was dismissed by the trial Court. Against the dismissal order, the petitioner has filed the present petition.



4. On the side of the petitioner, it is stated that the property belonged to the maternal grandmother of the petitioner, namely Indirani Ammal and the grandmother executed a Will on 01.09.2005. As the respondents tried to alienate the property, the petitioner filed an original suit and that in the written statement, it is stated that after the execution of the Will dated 01.09.2005, the said Indirani cancelled the same and executed an Annexure Will on 05.03.2008 and that Annexure Will is a forged document and the hand writing and thumb impression in Ex.B2 dated 05.07.2010 is to be compared with Will dated 01.09.2005.

5. On the side of the respondents, it is stated that this petition is filed only after the completion of the petitioner side evidence. After the completion of the first respondent's evidence, this Court has ordered for speedy disposal of the case. This petition is filed only to drag on the proceedings. Expert opinion is not a conclusive proof. There is no necessity to compare those documents. An attester in the Annexure Will is already examined before the Court. Hence, it is not necessary to send the document for expert opinion.

6. On the side of the petitioner, it is stated that the lower Court has come to a wrong conclusion that there will be variations in the signatures as there is three years gap between these two documents. Though the signature varies due to time difference, there is no chance for the thumb impression to have any changes and prayed the petition to be allowed.

7. On the side of the respondents, it is stated that documents are of different period and there are three years gap between these two documents and prayed to dismiss the petition.

8. Records perused. The entire case of the petitioner depends on the Will which is of the year 2005 and it is marked as Ex.B1. The case of the petitioner is that Ex.B2 is the forged document. In this circumstances, an opportunity for the petitioner to put forth her case is to be given. Since the burden is on the petitioner to prove her case. The difference between two documents is only three years and there is no possibility for the thumb impression to change. No prejudice will be caused to the respondent in comparing the signature and thumb impression. Hence, this Civil Revision Petition is allowed and the lower Court is directed to send the documents for expert opinion on payment of necessary fees and following necessary procedures. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar (CS-III)



To

The Subordinate Judge, Sivagangai.

+1cc to Mr.R.VIJAYAKUMAR, Advocate, SR.No. 83509

+1cc to Mr.R.A.Mohanram, Advocate, SR.No.83585

C.R.P. (PD) (MD) No.1206 of 2015
11.09.2018

MRN

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