



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :09.07.2018
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

C.R.P. (MD) No.2309 of 2013
and
M.P. (MD) .No.1 of 2013

1.Vembuammal
2.Saroja Ammal
3.Maniammal
4.Chinnapillai
5.Kannaki
6.Moovendra Bose

.. Petitioners / Defendants

Vs.

Govindarajan

.. Respondent / Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.10.2012 passed in I.A.No.277 of 2009 in O.S.No.39 of 2007, on the file of the learned District Munsif, Thiruvaiyaru.

For Petitioners : Mr.B.Anandan
For Respondent : Mr.V.Chandrasekar

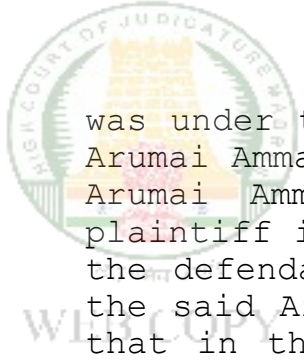
ORDER

The defendants in the suit in O.S.No.39 of 2007 on the file of the learned District Munsif, Thiruvaiyaru are the revision petitioners.

2. The brief facts which are necessary for this case are as follows:

2.1. The respondent herein as plaintiff filed the suit in O.S.No.39 of 2007 for a declaration that he is the absolute owner of the property based on the Will alleged to have executed in his favour and for consequential injunction restraining the revision petitioners/defendants from interfering with the peaceful possession and enjoyment of the plaintiff. According to the plaintiff, the suit property belonged to one Arumai Ammal, W/o.Thangaiah Mankondar of Nagachi village.

2.2. The original owner Arumai Ammal had six daughters, namely, defendants 1 to 5 and one Papa Ammal. The said Pappa Ammal died in the year 2005 and the sixth defendant is her son. The first defendant is the mother of the plaintiff. Stating that the plaintiff



was under the care and custody and brought up by the original owner Arumai Ammal, it is the specific case of the plaintiff that the said Arumai Ammal executed a Will on 25.10.1992 in favour of the plaintiff in respect of the suit property. The suit was contested by the defendants disputing the Will alleged to have been executed by the said Arumai Ammal in favour of the plaintiff. It is to be seen that in the written statement filed by the contesting defendants, the Will alleged to have been executed by the said Arumai Ammal was denied and the genuineness of the Will is therefore, specifically questioned.

2.3. In these circumstances, the defendants filed I.A.No.277 of 2009 in O.S.No.39 of 2007 to send the document, namely, the Will, alleged to have been executed in favour of the plaintiff by the said Arumai Ammal on 25.10.1992, for getting the expert opinion by comparing the left hand thumb impression of Arumai Ammal in the disputed Will with the thumb impression found in another Will dated 20.07.1980, which was executed by the said Arumai Ammal in favour of the defendants which came to their knowledge only on 12.07.2009. The plaintiff contended that the said document which surfaced two years after the suit is not genuine. Therefore, the Trial Court dismissed the interlocutory application on the only ground that the earlier Will of Arumai Ammal dated 20.07.1980 which is also in dispute, can not be compared to find out the genuineness of the document which is now filed as Ex.A1.

3. Heard the learned counsel for the revision petitioners/defendants and the learned counsel for the respondent/plaintiff and perused the materials available on record.

4. The reasoning of the trial Court to dismiss the interlocutory application in I.A.No.27 of 2009 is justified and the order passed by the trial Court is perfectly valid. Since the Will produced by the revision petitioners is not admitted and its genuineness is disputed, it cannot be sent for comparison by expert. In these circumstances, this Court do not find any error in the order passed by the trial Court, and there is no reason to interfere with the order dated 11.10.2012, passed by the trial Court in I.A.No.277 of 2009 in O.S.No.39 of 2009.

5. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)



To

1.The District Munsif,
Thiruvaiyaru.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1CC to Mr.V.Chandrasekar Advocate in SR.No.71773.

+1CC to Mr.V.Achuthan Advocate in SR.No.71783.

PJL

DS/PN/SAR-4:23.07.2018: 3P/6C

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