



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2018

CORAM

**THE HONOURABLE MR. JUSTICE S.S.SUNDAR**

C.R.P. (PD) (MD) No. 728 of 2013

and

M.P. (MD) No. 1 of 2013

Sivabalan : Petitioner/Respondent/1<sup>st</sup> Defendant

Vs.

1. Meenammal : Respondent/Petitioner/Plaintiff  
Mariyammal (Died)

2. The Village Administrative Officer,  
Velampatti.

3. The Tahsildar,  
Natham.

4. The District Collector,  
Dindigul District. : Respondents/Petitioners/Defendants  
3 to 5

**Prayer:** Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Natham in I.A.No.575 of 2012 in O.S.No.33 of 2010, dated 14.02.2013.

For Petitioner : Mr.R.Devaraj  
For R1 : Mr.H.Lakshmisankar  
For R2 to R4 : Given up

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**ORDER**

The defendant in the suit in O.S.No.575 of 2012 on the file of the District Munsif-cum-Judicial Magistrate, Natham, is the revision petitioner in this Civil Revision Petition.

2.The first respondent in this petition filed the suit in O.S.No.575 of 2012 before the District Munsif-cum-Judicial Magistrate, Natham, for a declaration that the unregistered Will fabricated by forging the signature of the plaintiff's father, one, Mariyammal, dated 26.05.1996 is invalid and for mandatory injunction to direct the revenue officials to invalidate the



mutation of revenue records in relation to patta No.1614 on the basis of the said Will and for other reliefs. The averments in the plaint are as follows:

2.1. The first defendant is the brother of the plaintiff and the second defendant is her mother. The plaintiff's father acquired the suit properties from out of the income of the joint family properties. The father of the plaintiff and first defendant died on 03.06.1995 and the plaintiff and the defendants 1 and 2 divided the movable properties equally among themselves. However, the first defendant made the plaintiff and the second defendant to believe that his father had executed an unregistered Will, dated 26.05.1993 and further made her to accept the said Will as true. The first defendant, however, did not show the Will, but was also managing the property described as 'C' schedule, which was shown as a property allotted to her under the Will and therefore, the plaintiff had no occasion to know about the truth and genuineness of the Will.

2.2. The plaintiff visited her mother during November-2009 and was informed by her that the Will had been forged by the first defendant by putting the signature of the plaintiff's father and it was only thereafter, she came to know that the Will does not contain the signature of the plaintiff's father, Late.Sri.Mariapillai. The plaintiff's father was a stamp vendor and utilising the unsold and unfilled stamp papers and the Will was fabricated by forging the signature of Late.Sri.Mariapillai. It is only on the basis of the forged Will, the first defendant has mutated the revenue records in his favour in respect of the property in S.Nos.233 and 252. Since the fraudulent act came to the knowledge of plaintiff only recently, the plaintiff is constrained to file the suit.

3. The suit was contested by the revision petitioner on many grounds. It was the case of first defendant that his father Late.Sri.Mariapillai executed a Will in his handwriting. The averments in the plaint are specifically denied by the first defendant. It is also the case of the first defendant that the plaintiff was given in marriage in the year 1979, by spending huge money apart from giving 15 sovereigns of gold as "Sridhana". It is the further case of the first defendant that the plaintiff has denied the execution of the Will only for the purpose of the case and that his father executed the Will in a sound disposing state of mind. It is also stated by the first defendant that the Will was acted upon as the plaintiff and defendants took the properties as per the allotment made in the Will executed by his father. The first defendant also submitted that the property, which was allotted to the second defendant, namely, the plaintiff's mother, was settled in favour of the first defendant and it was only for this reason, the plaintiff has come forward with the suit.

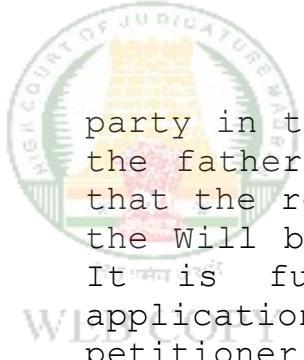


3.1.It is also the case of the first defendant that the plaintiff herself has executed a sale deed in favour of one Krishnan, by a registered sale deed, dated 25.10.2002 in respect of the suit 'C' schedule property, which was given to her in the Will. It is also stated that the plaintiff is estopped from disputing the Will after selling the property of the testator as per the Will executed by her father.

4.During the pendency of the suit, the plaintiff filed an application in I.A.No.575 of 2012 in O.S.No.533 of 2010 to send the document for expert opinion to compare the signature found in the Will, dated 26.05.1995 with the admitted signature found in a registered sale deed dated 30.03.1993 in favour of the first defendant. This application was opposed by the first defendant by disputing the allegations that the Will is forged. Since the plaintiff herself has executed a sale deed in favour of one Krishnan, by registered sale deed dated 25.10.2002, in respect of the property allotted to her under the said Will, the revision petitioner contended that the plaintiff is estopped from disputing the Will as a forged document. Since the burden lies on the defendant to prove the execution of the Will, the application filed by the plaintiff, for sending the documents for expert opinion, is stated to be unwarranted. It is also contended by the defendant in the counter that there is no necessity to send the documents for expert opinion as the signature of Late.Sri.Mariapillai can be verified by the Court.

5.The trial Court after considering the specific plea of the plaintiff in the suit that the first defendant made the plaintiff to believe the Will and that the plaintiff came to know about the forgery only later, allowed the application. Since the question whether the Will contains the signature of Late.Sri.Mariapillai or not is the question to be answered after full fledged trial, the trial Court held in favour of plaintiff that the plaintiff should be given an opportunity to prove his case by sending the Will for getting expert opinion by comparing the signature found in the disputed Will with the admitted signature found in the other document. Aggrieved by the order of lower Court allowing I.A.No.570 of 2012 in O.S.No.33 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Natham, the first defendant has preferred the above Civil Revision Petition. It is not in dispute that the second defendant in the suit died during the pendency of the suit.

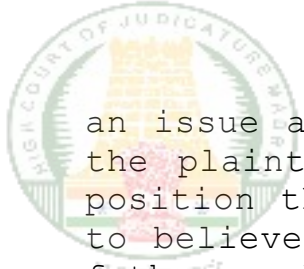
6.The learned Counsel for the petitioner submitted that the order of lower Court allowing the petition to send the document for getting expert opinion will result in great miscarriage of justice. The learned Counsel for the petitioner further submitted that the plaintiff is estopped from pleading that the Will executed by her father is forged, in view of the admitted fact that the plaintiff had executed a sale deed in favour of third



party in the year 2002 in respect of a property that was given by the father in her favour under the Will. It is further submitted that the revision petitioner/first defendant, is entitled to prove the Will by examining attestors and by letting in other evidence. It is further submitted that the Court cannot allow the application without giving an opportunity to the revision petitioner to prove the Will in the manner as required under Section 63(c) of Indian Succession Act, 1925 and as per Section 68 of Indian Evidence Act, 1872. The learned Counsel for the revision petitioner further submitted that the Will cannot be taken as proved merely by proving the signature of the testator in the Will. Since the requirement of Section 68 of Indian Evidence Act, 1872, and Section 63(c) of Indian Succession Act, 1925, have to be satisfied and the burden lies on the first defendant to prove the Will, the learned Counsel for the revision petitioner submitted that sending documents for expert opinion to prove the case of the plaintiff is unwarranted. The learned Counsel for the petitioner relied upon a judgment of a learned Single Judge of this Court in Testamentary Original Suit No.22 of 2010, in the case of **N.Durga Bai and others vs C.S.Pandara Bai and another**, dated 27.02.2017, wherein, it has been held that the Court cannot uphold validity of the Will merely on the basis of comparing the admitted signature of the testator with the signature found in the Will.

7. Though the submission of the learned Counsel for the petitioner may be appealing in a different case, having regard to the facts and circumstances of this case, this Court is unable to accept any of them. First of all, it is to be noted that proof of Will differs from any other document. Since the Court is expected to decide the issue with regard to the genuineness of a Will and the validity of the Will in the absence of testator, the Courts have held that the Will has to be proved beyond any reasonable doubt. The Court can disbelieve the Will, even if the propounder satisfies the statutory requirements. The Court may not believe the Will, if suspicious circumstances around the Will have not been properly explained. It is true that the Will can be proved by calling atleast one of the attestators. The Court will take a decision as to the truth, validity and genuineness in the Will on the basis of overall evidence available on both sides. Merely because, the legal requirements as contemplated under the Indian Succession Act and Indian Evidence Act are satisfied, it cannot be said that the Will is proved in all the cases. Though the Will can be proved like any other document, the Court will consider the issue with reference to the specific plea raised by the parties and various circumstances surrounding the Will.

8. In the present case, the plaintiff has specifically pleaded that the Will alleged to have been executed by her father, Late **Sri. M. R. R. R. R.**, is a forged document and that the Will does not contain her father's signature. Necessarily, the Court may frame



an issue as to whether the Will alleged to have been executed by the plaintiff's father is a forged document. It is the admitted position that the plaintiff herself has stated that she was made to believe the document as a true and valid Will executed by her father and that she has accepted the Will earlier. Hence the contention of the revision petitioner that the plaintiff who has sold the property that was allotted to her under the Will is estopped from questioning the Will as a forged one cannot be accepted at this stage, though it is a factor that can be considered while deciding the suit. Estoppel is a rule of evidence and things admitted in a document can be explained. Unless by one's conduct or representation, the other person was made to believe and alter his or her position to his or her disadvantage, estoppel cannot be believed. In this case, the revision petitioner raised the plea of estoppel to prevent the plaintiff to establish her case in the suit that the Will alleged to have been executed by her father is a forged document. Merely because the Will can be proved by other means and the burden lies on the first defendant to prove the Will, it cannot be said that the plaintiff has to wait till the first defendant prove the Will as such a course is impractical and Will only lead to undesirable results.

9. Having regard to the specific pleadings in the plaint, the plaintiff should be given an opportunity to prove her case by sending the document for expert opinion, which will enable the Court to adjudicate the issue more effectively. This Court, therefore, do not find any merits in this Civil Revision Petition and has no reason to interfere with the order of lower Court. As a result, this Civil Revision Petition is dismissed and the order passed by the learned District Munsif-cum-Judicial Magistrate, Natham in I.A.No.575 of 2012 in O.S.No.33 of 2010, dated 14.02.2013 is affirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif-cum-Judicial Magistrate,  
Natham.
2. The District Collector,  
Dindigul District.



4. The Village Administrative Officer,  
Velampatti.

+1cc to Mr.R.Devaraj, Advocate Sr.No.68594

+1cc to Mr.H.Lakshmisankar, Advocate Sr.No.68766

CMR

VB/PN/SAR2/11.07.2018/6P/7C

C.R.P. (PD) (MD) No.728 of 2013  
18.06.2018