

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.1273 of 2018

ORDER:

Aggrieved by the dismissal of an application under Section 45 of the Evidence Act, the plaintiff in a suit for declaration has come up with the above revision petition.

2. Heard Mr. Manik Rao, learned counsel for the petitioner.

3. This is a case where the petitioner/plaintiff claims on the basis of a registered Will dated 19.10.2009. The respondents are claiming on the basis of an unregistered Will allegedly executed subsequently. Actually there were two suits. The present revision arises out of the suit, viz., O.S.No.130 of 2012 for declaration. There is another suit originally filed elsewhere and now transferred to this Court in O.S.No.1 of 2016 for recovery of money.

4. When both the parties are claiming under different Wills, one registered and another unregistered, the question of sending them for examination by handwriting expert does not arise. As a matter of fact, the Court below now has the advantage of examining both the Wills under Section 73 of the Indian Evidence Act, 1872. Therefore, the rejection of the application under Section 45 is perfectly in order.

5. Moreover, the petitioner sought the comparison of the signature in the alleged Wills, with the Pattedar Passbook and a registered mortgage deed of the year 1977. With such long gap, no comparison can be made. Therefore, the civil revision petition is dismissed as devoid of merits. The Court can examine the signatures under Section 73 of the Act. There shall be no order as to costs.

6. As sequel, miscellaneous petitions pending in this revision, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

9th March, 2018
Js.



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