

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.4228 of 2013

and

M.P.No.1 of 2013

1. Kanagarathinam

2. Ranganayaki

... Petitioners/Defendants

Vs.

1. Nagaraj

2. Kala

3. Manoharan

4. Amuthavalli

... Respondents1 &2/Plaintiffs

... Respondents3 &4/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 19.12.2011 made in I.A.No.655 of 2010 in O.S.No.207 of 2004 on the file of the District Munsif Court, Attur.

For Petitioners : M/s.Zeenath Begum

For R1 : Mr.P.Jagadeesan

For R2 : No appearance

For R3 & R4 : Given up

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ORDER

This Civil Revision Petition has been filed against the order of the court below in dismissing the application filed under Section 45 of the Indian Evidence Act, seeking to take photographs of the Thumb Impression and signatures found in the Thumb Impression Register and the Copy Register pertaining the Will dated 26.02.1991 executed by the testatrix and to send the same along with the admitted Thumb Impression and signatures of Gajalakshmi for comparison and to obtain the Report.

2. The suit in O.S.No.207 of 2004, has been filed for partition as against the defendants claiming the share. The defendants propounded the Will said to have been executed by the mother and registered on the file of the Sub Registrar Office.

3. It is the contention of the revision petitioners that originally the Will has been taken away by the plaintiffs. Therefore, in order to prove the Will is executed by their mother, the comparison of the Thumb Impression maintained with the Sub Registrar and the copy of the Will available in the Registrar Office is to be examined by the expert. The Trial Court dismissed the above application, on the ground

that the Will has to be proved in a manner known to law. Mere comparison of the Thumb Impression will not sufficient to prove the Will, as against which the present civil revision petition has been filed.

4. Heard M/s.Zeenath Begum, learned counsel appearing for the revision petitioners and Mr.P.Jagadeesan, learned counsel appearing for the first respondent and perused the impugned order of the trial Court.

5. It is the main contention of the revision petitioners that since the original Will has been taken away by the plaintiffs, for comparison of thumb impression of the testatrix with that of the records maintained in the Registrar Office is to be compared.

6. It is to be noted that even assuming that original the Will has been taken away by the plaintiffs, there is no bar for the revision petitioners to file the certified copies and also call for the copies of the registers from the concerned Registrar Office for bringing document/Will to the court in the manner known to law. Even the attesting witness under Section 69 of the Indian Evidence Act 1872, denies or if not attesting witness cannot be found it must be proved

N.SATHISH KUMAR, J.

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that the attestation will have to be proved by resorting the provision under Section 69 of the Indian Evidence Act 1872.

7. I do not find any illegality or infirmity in the order passed by the trial Court. Hence, this civil revision petition is dismissed. The trial Court is directed to dispose of the suit within four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Index: Yes/No
Speaking/ Non-Speaking
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To

1. The District Munsif Court, Attur.
2. The Section Officer, VR Section, Madras High Court.

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