

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NOS.2385 AND 2387 OF 2019

AND

CMP NO.15560 AND 15562 OF 2019

1.Ramayal
2.Pushpamani

...

Petitioners
1 & 2 in both CRPs'

VS.

1.Rajeswari
2.Diviya

...

Respondents
1 & 2 in both CRPs'

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 03.07.2019 made in I.A.No.1 of 2019 and I.A.No.2 of 2019 respectively, in O.S.No.98 of 2013 on the file of the Subordinate Judge, Sathyamangalam.

For Petitioners :
(in both CRPs')

Mr.A.V.Arun

For Respondents :
(in both CRPs')

Mr.N.Manokaran

COMMON ORDER

These Civil Revision Petitions are filed against the dismissal of the petitions filed viz., I.A.No.1 of 2019 under 45 of the Indian Evidence Act read with Order 26 Rule 9 and Section 151 of the Civil Procedure Code for comparison of signature in the WILL and another viz., I.A.No.2 of 2019 to send for documents for expert opinion under Section 151 of the Civil Procedure Code.

2. The respondents filed a suit for declaration of title on the basis of the WILL dated 30.08.2009 and for permanent injunction. The first petitioner / defendant filed a written statement attacking the WILL as a court document. At that juncture, the petitioners filed the above interlocutory applications viz., one for sending the WILL for comparison of the signatures with the admitted documents and another for sending the documents for expert opinion. The Trial Court has dismissed both the interlocutory applications on the ground that it is for the propounder to prove the WILL through attesting witnesses. The execution of the WILL should be taken as proved and the expert opinion with regard to the signatures will not have any impact on the same.

3. The learned counsel for the respondents would contend that the opinion of the expert as to the identity of the signature of the testator in a WILL is not a relevant factor. In support of his contention, he relied on a judgment of the Kerala High Court in **R.SARASWATHY VS. BHAVATHY AMMAL AND ANOTHER [1989 AIR (KERALA) 228]** wherein it is observed as under:

"8. In regard to the execution of a will, the Court has to form a judgment from the evidence, the propounder may let in following the procedure prescribed under Sections 68, 69 and 71 of the Evidence Act. Even at the risk of repetition I would in this context refer to Section 63(a), according to which the first stage in the execution of the will can be accomplished by signing the will by adopting any one of the three methods namely, (1) the testator putting his signature, (2) the testator putting his mark or some other person putting his signature in the presence of the testator and under his direction. That means in order to say that a will has validly been executed it is not necessary that it should contain the signature of the testator; but on the other hand it is enough if the testator affixes his mark or some other

person signs the document in the presence of the testator and under his direction. And therefore, in a case where the expert opines that the signature seen on the will is not that of the testator but at the same time the execution has validly been proved, can the Court still hold that the will is not valid relying on the opinion of the expert in preference to the uncontroverted evidence proving the execution of the will? My answer is no, because as already noted, under law to hold that a will is valid, it is the execution of the will within the meaning of [Section 63, Succession Act](#) that is required to be proved unlike in the case of an ordinary document where under [Section 67, Evidence Act](#) the signature should be proved. It may in this context be relevant to note that a propounder can possibly contend that the signature which is opined to be not that of the testator by the expert, in fact is not his signature but only a mark put by him within the meaning of [Section 63\(a\), Succession Act](#). The Court therefore has no need to form an opinion on the question as to identity of the signature of the testator. This being the position in law, in my judgment, the opinion of the expert as to the identity of the signature of the testator in a will is not a relevant fact. "

4. The learned counsel for the respondents would further contend that the expert opinion is not the conclusive proof as to the authenticity and genuineness of the WILL made by the propounder. In respect of the same, he relied on a judgment of this Court in **PERIATHAL AND OTHERS VS. GOMATHI AND ANOTHER [2018 (3) MWN (CIVIL) 584]** wherein, it is observed as under:

"14. Furthermore, when as contended by the petitioners' counsel, even assuming for the sake of arguments that the Will in question is subjected to expert's scrutiny, the opinion of the expert would not be going to tilt the scales in favour of either of the parties as regards the genuineness of the Will in question and still, the petitioners being the propounders of the Will, would be required to establish the authenticity of the same as per requisites of law by adducing the relevant evidence pointing to the same, in such view of the matter, it is seen that the applications preferred by the first respondent/plaintiff would not serve the required purpose.

15. In addition to that, the argument has been put forth by the petitioners' counsel that the Court

below, without going into merits and demerits of the contentions as projected by the parties and also without considering the stage at which the applications had come to be preferred by the first respondent/plaintiff and on that basis alone, it is his contention that the impugned orders passed by the Court below sans assigning any reason in allowing the same, are liable to be set aside and on the abovesaid ground alone, it is his contention that the civil revision petitions should be entertained.

16. The above arguments put forth by the petitioners' counsel seem acceptable. No reason whatsoever has been given by the Court below for entertaining the abovesaid applications. On a reading of fair order of the Court below passed in the abovesaid applications, it is found that after culling out the contentions put forth by the first respondent/plaintiff's counsel and the petitioners' counsel, the Court below would proceed that considering the plea put forth by the first respondent/plaintiff in the plaint questioning the genuineness of the Will in question, on that premise, proceeded to hold that the expert's opinion would be essential to prove truth of the Will in question. However, as to why the first respondent/plaintiff had

not endeavoured to come forward with such applications at the earliest point of time, no discussion at all has been made by the Court below. Further more, when the petitioners are required to establish the proof of the Will, they being the probounders of the same, the Court without adverting to the abovesaid aspects of the matter, on the premise that the first respondent/plaintiff had questioned the truth of the Will in question, held that the abovesaid applications are entitled for acceptance. However, when the request of the first respondent/plaintiff to subject the Will in question for expert's scrutiny is being resisted by the petitioners on various grounds including the ground of delay as well as no purpose would be served in subjecting the Will in question for expert's study, the Court below without adverting to any of the abovesaid points and in particular, without assigning any reason whatsoever, is found to have entertained the applications. On that ground alone, in my considered opinion, also as putforth by the petitioners' counsel, the impugned order passed by the Courts below is liable to be reversed.

17.Considering the facts and circumstances of the case, the expert's opinion of the testators' signature

in the impugned Will not being the crucial factor for determining the truth of the same and dehors the same, when the petitioners would be required to establish the authenticity of the same as per the requirement of law as provided under [Section 63](#) of the Indian Succession Act and [Sections 68 to 71](#) of the Indian Evidence Act by examining the concerned witnesses, who are associated with the Will in question, in such view of the matter, the Court below, without adverting to any of the aspects of the issues involved with reference to the same and also without considering the delay aspect of the applications preferred by the first respondent/plaintiff and furthermore, without assigning any reason whatsoever having endeavoured to entertain the applications preferred by the first respondent/plaintiff, in my considered opinion, the impugned orders passed by the Court below cannot be allowed to sustain any further and accordingly, the same are liable to be set aside."

5. I have heard the submissions made on either side and perused the materials available on record.

6. It is true that proving the execution of the WILL will fall on the shoulders of the propounder of the WILL. Till the WILL is proved through the attesting witnesses or on any other mode, as per the requirement of law, it is premature to send it for expert opinion. However, it cannot be held that once the attesting witnesses in the execution of the WILL is proved, the contents and the circumstances leading to the execution of the WILL stands proved. It is always open to the contesting party to prove the valid enforcement of the WILL said to have been executed. For that limited purpose, it can be sent for comparison of signatures and to get expert opinion on that and other aspects. Therefore, the contention of the respondents that once the execution is proved, the contents of the WILL will automatically stands proved, cannot be accepted. It is open to the petitioners to approach the Court at the appropriate time after proving the execution of the WILL by taking appropriate measures.

7. With these observations, the order dated 03.07.2019 passed in I.A.No.1 of 2019 and I.A.No.2 of 2019 respectively, in O.S.No.98 of 2013 by the learned Subordinate Judge, Sathyamangalam is confirmed, to the extent indicated above. It is reiterated that it is

open to the petitioners to take appropriate measures at the relevant point of time as indicated above.

8. The Civil Revision Petitions are disposed of with the above observation and direction. No costs. Consequently, connected civil miscellaneous petitions are closed.

30.08.2019

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

To

The Subordinate Judge
Subordinate Court
Sathyamangalam.

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M.GOVINDARAJ, J.

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