



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

**C.R.P(MD)No.1493 and 1494 of 2019
and
C.M.P. (MD)No.7887 of 2019**

I.Rajesh ... Petitioner / Petitioner /Plaintiff
Vs.

Jesuraj @ Rajkani ... Respondent / Respondent/Defendant

PRAYER: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, against the fair and decreetal order dated 03.07.2019 made in I.A.Nos.1 and 2 of 2019 in O.S.No.221 of 2011 on the file of the Additional Subordinate Court, Srivilliputtur.

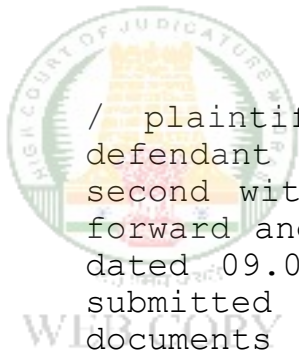
For Petitioner : Mr.M.Thirunavukkarasu
in both CRPs
For Respondent : Mr.S.Alagusundar
in both CRPs

O R D E R

This Civil Revision Petition has been filed challenging the order, dated 03.07.2019 passed in I.A.Nos.1 and 2 of 2019 in O.S.No.221 of 2011 by the learned Additional Subordinate Court, Srivilliputtur.

2.The application in I.A.No.1 of 2019 was filed to reopen the suit in O.S.No.221 of 2011 and I.A.No.2 of 2019 was filed to send Ex.A4-Will dated 29.12.2010 along with Ex.B3-Will dated 09.02.2009, for expert opinion to verify the signature of second attesting witness viz., Jesuraj @ Rajkani, who is none other than the sole defendant in the suit. The Court below after considering the submissions of both sides, dismissed the applications in I.A.Nos.1 and 2 of 2019 in O.S.No.221 of 2011 stating that the petitioner therein approached the Court with huge delay.

3.The learned counsel for the revision petitioner would contend that there are two Wills. One Will was executed as a registered Will dated 09.02.2009 which is marked as Ex.B3 and it was executed by one Gnanambal in favour of the sole defendant. Subsequently, the said Gnanambal executed another Will in favour of the revision petitioner



/ plaintiff vide Will dated 29.12.2010. In the said Will the defendant Jesuraj also one of the witnesses, who was signed as second witness. After signing in the said Will, now he is coming forward and contend that the deceased Gnanambal was executed a Will dated 09.02.2009 and the same was also registered. Therefore, he submitted that the applications were rejected without sending the documents for expert opinion and therefore, the same are liable to be set aside.

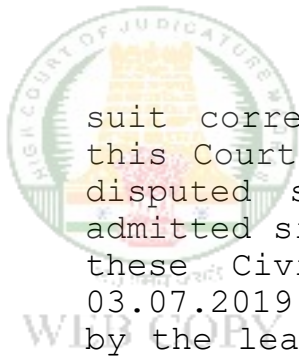
4. On the other hand, the learned counsel for the respondent would contend that the second Will was not registered. Further he is disputing his signature as one of the attesting witnesses and that the present applications have been filed after a huge delay of six years and therefore, the Court below has rightly rejected the applications.

5. Heard the learned counsel for the petitioner; the learned counsel for the respondent and perused the materials available on record.

6. It was submitted by both the parties that the deceased Gnanambal was executed a Will, dated 09.02.2009, in favour of the sole defendant Jesuraj and the same was registered. Subsequent to the same, the said Gnanambal was executed an unregistered Will, dated 29.12.2010, in favour of the revision petitioner / plaintiff. In the said Will the sole defendant Juesuraj also signed as one of the attesting witnesses and based on the second Will the revision petitioner / plaintiff is entitled for the entire property, as the Second Will supersede the earlier Will dated 09.02.2009. However, it is the contention of the respondent that in the said Will he has not signed as witness and it is a forged one and his thumb impression also forged one. Therefore, the Court below has rightly dismissed the application not only based on the delay but also based on the merit.

7. The issue to be decided in the case is whether the defendant has signed as one of the attesting witnesses to the Will dated 29.12.2010 or not?.

8. This Court has examined the signature of the respondent by virtue of comparing on the naked eye, signatures in the written statement and in the Will dated 29.12.2010, this Court finds that the signatures found in the written statement and the Will appears varying from the signatures found in the written statement. Further, signature in the written statement itself varied page to page. When that being the case, this Court is of the view that it would be appropriate to refer the disputed signature to the expert opinion for comparison with the admitted signature, so that the dispute in the suit can be resolved easily by the Court below and even there is a chance for the amicable settlement between the parties. Therefore, the Court is of the view that the Court below cannot decide the



suit correctly based on the Will, dated 09.02.2009 alone. Hence, this Court is of the view that it would be appropriate to send the disputed signatures to the expert opinion to compare with the admitted signatures and accordingly, this Court is inclined to allow these Civil Revision Petitions. Consequently, the order dated 03.07.2019 passed in I.A.Nos.1 and 2 of 2019 in O.S.No.221 of 2011 by the learned Additional Subordinate Court, Srivilliputtur. is set aside and these Civil Revision Petitions are allowed. This Court directs the Court below to send the disputed signature along with the admitted signatures to the expert opinion within a period of three weeks from the date of receipt of a copy of this order and the expert shall provide his opinion within a period of three weeks from the date of receipt of the admitted signature as well as the disputed signature and thereafter, the Court below shall decide the case within a period of three months from the date of receipt of the expert opinion. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Rj2

To

The Additional Subordinate Judge,
Srivilliputtur.

+1 CC to Mr.S.ALAGU SUNDAR, Advocate (SR-95285[F] dated
31/10/2019)

+1 CC to Mr.M.THIRUNAVUKKARASU, Advocate (SR-95012[F] dated
31/10/2019)

**Order made in
C.R.P(MD)Nos.1493 and 1494 of 2019
30.10.2019**

MK (21.11.2019) 3P 4C