



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :05.12.2019

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)Nos.2056 and 2057 of 2019
and
C.M.P. (MD)No.10560 of 2019

1.M.Perumal
2.P.Chellammal
3.P.Murugan
4.P.Nainar

.. Petitioners in both C.R.Ps./
Petitioners/Defendants 4 to 7

Vs.

M.Perumal (Died)
1.M.Ayyappan
2.M.Selvi
3.P.Ulagammal
4.Minor P.Sathiyamoorthy

5.Minor Santhosh Prabhakaran .. Respondent 1 to 5/
Respondents 2 to 6/Plaintiffs
(Respondents 4 and 5 are rep. By the respondent herein
Their mother and natural guardian 3rd respondent herein)

6.M.Ganesh
7.M.Pitchammal
8.M.Parvathi

.. Respondents 6 to 8 in both C.R.Ps./
Respondents 7 to 9/Defendants 1 to 3

Common Prayer: These Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order passed in I.A.Nos.3 and 4 of 2019 in O.S.No.57 of 2013 dated 14.10.2019 on the file of the Ist Additional District Court, Thoothukudi.

For Petitioners(in both C.R.Ps.) : Mr.S.Muthumalai Raja
For 2nd Respondent(in both C.R.Ps.) : Mr.M.P.Senthil

COMMON ORDER

Heard the learned counsel appearing on either side.

2.These Civil Revision Petitions have been filed against the order passed in I.A.Nos.3 and 4 of 2019 in O.S.No.57 of 2013 dated 14.10.2019 on the file of the Ist Additional District Court, Thoothukudi.



3.The revision petitioners herein are the defendants 4 to 7, the respondents 1 to 5 herein are the plaintiffs and the respondents 6 to 8 herein are the defendants 1 to 3 in the suit. The respondents 1 to 5 herein have filed a suit in O.S.No. 57 of 2013 for a prayer of partition. The petitioners herein have filed petitions in I.A.Nos.3 and 4 of 2019 to reopen the case and to appoint a Commissioner to take documents for expert opinion and that petitions were dismissed by the trial Court. Against which, the revision petitioners have filed the present revision petitions.

4.The brief substance of the petitions in I.A.No.3 and 4 of 2019 is as follows:

The signature of late Manthiramoorthy was forged in Ex.A1. P.W.1 during his cross examination, has admitted that he is ready to take steps for expert opinion to compare the signature of Manthiramoorthy in Exs.A1 and A10. The plaintiffs did not file the document Ex.A22 at the time of filing of the suit in the year 2013. Only on 10.04.2019, during the cross examination of the fourth defendant, Ex.A22 original sale deed was marked by the plaintiffs. Hence, it is necessary to examine the genuineness of the signature of Manthiramoorthy in Ex.A1 by comparing the same with Ex.A22. Hence, the case is to be reopened and it is necessary to appoint a Commissioner to take documents for expert opinion.

5.The brief substance of the counters in I.A.No.3 and 4 of 2019 is as follows:

The plaintiff side arguments was over and only with a motive to drag on the case, the petitioners have filed these petitions. Already witness was examined to prove the Will, the Court can come to a conclusion by comparing the signature in the documents Ex.A1 and Ex.A22. The petitioners did not take any action to send the document for expert opinion at an early stage and the petitions are to be dismissed.

6.The trial Court after considering both sides, dismissed the petitions. Against which, the petitioners have preferred this revision petitions.

7.On the side of the revision petitioners, it is stated that the case is to be reopened, since the petitioners disputed the signature of late Manthiramoorthy in the Will marked as Ex.A1 and the original of the Will was marked as Ex.A22 only on 10.04.2019. Since the petitioners filed the petitions for appointment of Advocate Commissioner to get the expert opinion by comparing the documents, the case is to be reopened. Ex.A1 is the copy of Ex.A22 and the petitioners were not able to file the petition for expert opinion, since the original was not marked at that time. Under Order XXVI Rule 10A of CPC and under Section 45 of Indian Evidence Act, the petitioners are entitled to file the petition, even at the late stage. Hence, the petitions are to be allowed.



8. On the side of the revision petitioners, it is stated that the delay in filing the petition was only due to the fault of the plaintiffs. The plaintiffs filed the original of Ex.A1, sale deed only during the cross examination of the fourth defendant on 10.04.2019 and the trial Court dismissed the petitions only on the ground of delay.

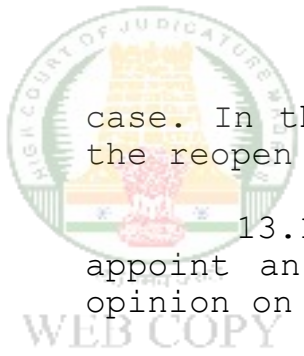
9. On the side of the respondents, it is stated that the burden is upon the plaintiffs to prove the case. The Will was duly proved by the attestor of the Will. Only at the stage of arguments, the petitioners filed the reopen petition and there is no necessity for the defendants to disprove the Will. The written statement was filed in the year 2014. After five years, these petitions were filed only to drag on the case. Expert opinion is not a conclusive proof and the Court can compare the signature in the document. Already similar petition was filed by the petitioner in I.A.No.1 of 2019 and the same was dismissed on 01.08.2019 and thereafter, the petitioners filed the present petitions and the trial Court has made an observation that the Court can verify signatures in the document and can come to a conclusion as to the genuineness of the documents. The Court has considered that expert opinion will be only an additional document, and not a conclusive proof and prayed the petitions to be dismissed.

10. On the side of the revision petitioners, it is stated that even in the written statement itself, the defendants denied the validity of the Will and the defendants filed a counter claim and when the defendants denied the signature, it is the duty of the defendants to disprove the signature and the burden shifts. In support of his contention, the judgment passed by the Hon'ble Supreme Court in the case of **Daulat Ram and Others v. Sodha and Others** reported in **(2005) 1 SUPREME COURT CASES 40**, which reads as follows:

"But onus shifts on the person who alleges the Will as being forged or obtained under undue influence or coercion, to prove the same."

11. It is seen that the suit was filed by the plaintiffs for partition. The defendants/revision petitioners have filed counter claim in the suit. In the above circumstances, though the burden is upon the plaintiffs to prove the Will, the defendants also should be given an opportunity to disprove the Will.

12. It is seen that the original Will was marked only on 10.04.2019. Hence, it is decided that the petitioners must be given an opportunity to put forth their case. No prejudice will be caused to the respondents in allowing the petition. If an expert opinion is obtained, it will be an additional document helpful to decide the



case. In the above circumstances, to facilitate the expert opinion, the reopen petition is also necessary.

13. In the above circumstances, the trial Court is directed to appoint an Advocate Commissioner to take the documents for expert opinion on payment of necessary fee by the petitioners.

14. In view of the above direction, the Civil Revision Petitions are allowed and the orders passed in I.A.Nos.3 and 4 of 2019 in O.S.No.57 of 2013 dated 14.10.2019 on the file of the Ist Additional District Court, Thoothukudi is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

1. The Ist Additional District Judge, Thoothukudi.

+1 CC to Mr.S.MUTHUMALAIRAJA, Advocate (SR-103916[F] dated 06/12/2019)

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