



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD) No.1127 of 2013

and

M.P. (MD) No.1 of 2013

1.E.U.Sathiyanesan (died)

..Petitioner/2nd defendant/2nd defendant

2.Rengammal

3.Saral Aknas

4.Punitha Esthar

5.Amutha Reisal

(Petitioners 2 to 5 are brought on records
as Lrs of the deceased sole petitioner vide
order dated 30.06.2015 in M.P.No.1 to 3 of 2015)

.. Petitioners

Vs.

1.A.J.Sathiyanesan

.. 1st respondent/Petitioner/Plaintiff

2.Shibila Mary

.. 2nd respondent/1st defendant / 1st defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.06.2013 made in I.A.No.88 of 2012 in O.S.No.177 of 2008 on the file of the Additional District Munsif Court, Eraniel.

For petitioners : Mr.AR.Jeya Rhuthran

For R-1 : Mr.K.N.Thambi

ORDER

(Order of this Court was made by **S.S.SUNDAR, J.**)

This Civil Revision Petition is filed by the revision petitioner, who is the second defendant in the suit in O.S.No.177 of 2008, as against the order dated 06.06.2013 passed in I.A.No.88 of 2012 in O.S.No.177 of 2008 by the learned Additional District Munsif, Eraniel.

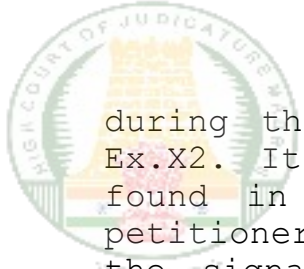


2.The brief facts, which are necessary for the disposal of this revision, are as follows:-

(i).The first respondent in the Civil Revision Petition, as plaintiff has filed a suit in O.S.No.177 of 2008 on the file of the Additional District Munsif Court, Eraniel, for declaration that the gift deed, vide document No.1298 of 1981 of Manavalakurichy Sub Registrar, is to be declared as a fraudulent and void document and to set aside the same. The suit is also for consequential permanent injunction restraining the defendants from making any encumbrance over the plaint schedule property.

(ii).The case of the plaintiff in the suit is that the property originally belonged to one John Pillai Sathyanesan @ J.P.Sathyanesan, S/o.Sathyanesan. It is stated that the said John Pillai Sathyanesan during his life time executed a registered Will, which is also registered as document No.95 of 1978 before the District Registrar Office. The said John Pillai Sathyanesan died issueless on 11.10.1982. It is stated that the suit property was bequeathed in favour of the plaintiff and the said Will was executed by Thiru.John Pillai Sathyanesan. It is further stated in the plaint that a fraud had been played by registering another settlement deed as if the original owner Thiru.John Pillai Sathyanesan had executed and registered a gift deed in the year 1981. It is the specific case of the plaintiff that the alleged gift deed is a fraudulent creation and it is not only by fraud but also by impersonation, the document is registered.

(iii).Though the suit is only in respect of the property, which was bequeathed in favour of the plaintiff, it is stated that the Will was also in respect of several other properties that was bequeathed in favour of other heirs of the testator. The suit was contested by the first respondent viz., the revision petitioner by filing a written statement. It is relevant to point out that in paragraph No.3 of the written statement, it is admitted to the extend of execution of the Will by late. John Pillai Sathyanesan to the children of his brother and sister with life enjoyment to his beloved wife Mrs.Rosammal. Even in subsequent paragraphs of the written statement, the execution of the Will is admitted by the revision petitioner. During the pendency of the suit, the first respondent in this Civil Revision Petition viz., the plaintiff in the suit filed an interlocutory application in I.A.No.88 of 2012 in O.S.No.177 of 2008 under Section 45 of Evidence Act r/w Order 26 Rule 10 (A) and Section 151 C.P.C., to appoint an Advocate Commissioner for sending the documents viz., the Will (Ex.X2) executed by the testator and Ex.B6, which is the original of registered gift deed stated to have been executed by the same testator in favour of the first defendant for getting expert opinion after comparison of signatures in both the documents. In the affidavit filed in support of the petition, the first respondent has stated that the file copy of the registered Will which is registered as document No.95 of 1978 containing the signature of the testator viz., John Pillai Sathyanesan is produced



during the examination of P.W.4 and the document was marked as Ex.X2. It is also stated that the signature of the testator is found in the document marked as Ex.X2. However, the revision petitioners in their counter affidavit opposed the comparison of the signature found in Ex.B6 with that of Ex.X2 and that the document for expert opinion is unnecessary, as the Court itself can compare the disputed signatures. It is also contended by the revision petitioner that the Will relied upon by the plaintiff had not seen the light of the day and for that reason only, the registration copy of the Will had been produced and not the Will itself. The trial Court after considering the objections raised by the revision petitioner allowed the application. Aggrieved by the same, the present Civil Revision Petition has been filed by the second defendant.

3. During pendency of this revision, the revision petitioner died and his legal representatives have been impleaded as petitioners 2 to 5.

4. The learned counsel for the revision petitioners submitted that the comparison of signatures can be permitted to be done by an expert, only if the documents contain the admitted signatures. The learned counsel would urge before this Court that the Will stated to have been executed by the testator did not see the light of the day and therefore, it is not an admitted document. Secondly, the original Will is not produced by the plaintiff. Stating that what was called for is only a registration copy of the Will it is contended that Xerox copy of the document containing the signature cannot be sent for expert opinion for comparing the signatures found in another document. The learned counsel also submitted that the application filed by the plaintiff for getting expert opinion by sending the original documents, is not maintainable, as this Court in several cases consistently held that original documents cannot be removed from the custody of the Court for getting expert opinion.

5. The purpose of appointment of Advocate Commissioner is only to get photographs of the signatures contained in the documents and to send it for expert opinion. In the present case also the same procedure has been followed and hence, there is no merit in the last contention of the revision petitioner.

6. It is to be seen that the document Ex.X2 appears to be a filing copy of the Will and it contains the signature of the testator. As pointed out earlier, the defendants have categorically admitted the execution of the Will. When they have not disputed the document, it should be presumed that the Will contains the genuine signature of the testator. Hence, it is not open to the revision petitioner, now to contend that the document, sought to be sent for getting expert opinion, does not contain the admitted signatures of the testator.



7. The other submission of the learned counsel for the petitioner is that the documents are not contemporary. In this case, the Will had been executed in the year 1978 and the gift deed is of the year 1981. It is not suggested before this Court that other documents which are closed to 1981 than the Will is available.

8. In the above circumstances, this Court is of the view that no case has been made out by the revision petitioner, for this Court to interfere with the order of the trial Court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

rj2

To
The Additional District Munsif Court,
Eraniel.

+1CC TO MR.K.N.THAMPI, Advocate Sr. No. 61101

C.R.P. (MD) No.1127 of 2013 (PD)
12.04.2019

TR (30.04.2019) 4P 3C