

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.4212 of 2018
and C.M.P.No.23144 of 2018

Padmini

... Petitioner

Vs.

P.Subramani (Died)

S. Maniarasi (Died)

1. S. Uma

2. Jaya

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 19.09.2018 made in I.A.No.146 of 2018 in O.S.No.171 of 2009 on the file of the Principal District Munsif, Trichengode.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : No appearance

ORDER

The plaintiff in O.S.No.171 of 2009 has come up with this revision questioning the order of the trial Court, dismissing her application for comparison of the thumb impression of her father, Periya Gounder found in the disputed Will, dated 06.02.2002 with the admitted thumb impressions found in the Settlement Deed of the year 1993 executed by Periya Gounder .

2. The suit is laid by the plaintiff for an injunction on the strength of title under the Will dated 06.02.2002. According to the plaintiff, the deceased Periya Gounder executed a Will in her favour bequeathing the suit property to her and that she has been in possession pursuant to the said Will. The 1st defendant is the son of Periya Gounder. The 2nd defendant is the wife of Periya Gounder. The defendants 3 and 4 are the wife and daughter of the 1st defendant who died pending suit.

3. A written statement was filed by the defendants. In the written statement, a plea was taken to the effect that the Will may be forged or created by undue influence. The plaintiff had examined the scribe and the

attestor of the Will as Pws 2 and 3. After the closure of the evidence of the plaintiff, when the defendants evidence began, the plaintiff has come up with the instant application for reference of the documents to the Expert for comparison as stated earlier.

4. The trial Court dismissed the application holding that it is belated. I am unable to subscribe to the views of the trial Court. Referral of a document to an expert that too for comparison of the finger print is only with an object of placing the best evidence before the Court. The fact that the Settlement deed of the year 1993 was executed by Periya Gounder is not denied. The defendants have taken a specific stand, denying the thumb impression of Periya Gounder in the Will dated 06.02.2002. Therefore, it becomes incumbent upon the plaintiff to establish the Will. All that the plaintiff seeks to do by referring the matter to the expert is to place the best evidence before the Court.

5. I find that the trial Court has adopted a very strict approach and denied an opportunity to the plaintiff to place the best evidence before the Court. The trial Court would have done well to have appointed an Advocate

Commissioner to take the will and the settlement deed to the State Finger Print Bureau and got its opinion. I do not think that the defendants would be prejudiced by this process.

6. No doubt, the suit is of the year 2009. But because of the dismissal of this application, this revision has been pending for two years. Even if a Commissioner had been appointed, the process would have been completed by now. I am of the considered opinion that the trial Court must have adopted more pragmatic approach and sought for the best evidence by appointing an Advocate Commissioner, to take the Will to the Finger Print Expert.

7. In view of the above, I have no hesitation in setting aside the order of the trial Court and allowing the Civil Revision petition. This Civil Revision petition is allowed. I.A.No.146 of 2018 will stand allowed. The trial Court will appoint an Advocate Commissioner to take the will to the Government Expert and get their opinion on the finger prints found in the disputed Will by having it compared with the admitted thumb impression of

Periya Gounder found in 1993 Settlement instrument. No costs.

Consequently, connected miscellaneous petition is closed.

08.10.2020

vum

Index: Yes/No

Speaking order / Non speaking order

To

The Principal District Munsif, Trichengode.



WEB COPY

CRP (PD) No.4212 of 2018

R.SUBRAMANIAN, J.

vum



CRP (PD) No.4212 of 2018
and C.M.P.No.23144 of 2018

WEB COPY

08.10.2020