



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (P.D.) (MD) .Nos.26 and 27 of 2018

and

C.M.P. (MD) .No.105 of 2018 in C.M.P. (MD) .No.105 of 2018

WEB COPY

Lakshmi

... Petitioner/Petitioner in both C.R.Ps.

Vs.

Arumugam (died)

1.Rajaram

2.Kaliyammal

3.Sankar Raju

4.Vijaya Sankar

5.Stalin

6.Lenin Sakaravarthy

... Respondents/Respondents/Defendants
in both C.R.Ps.

PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decretal order dated 29.11.2017 passed in I.A.Nos.113 and 114 of 2017 in O.S.No.241 of 2009 on the file of the Additional District Munsif Court, Sankarankovil.

For Petitioner : Mr.M.P.Senthil

(Both Cases)

For R1 : Mr.T.Lajapathi Roy

(Both Cases)

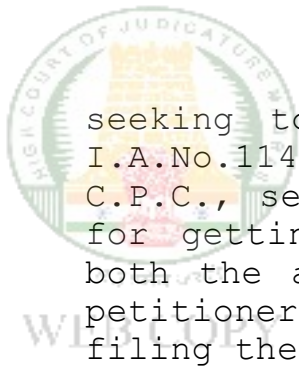
For Respondents 2 to 6 : No appearance

(in Both Cases)

C O M M O N O R D E R

These Civil Revision Petitions have been filed against the order passed by the learned Additional District Munsif, Sankarankovil in I.A.Nos.113 and 114 of 2017 in O.S.No.241 of 2009, dated 29.11.2017.

2. The revision petitioner has filed a suit in O.S.No.241 of 2009 against the respondents before the District Munsif Court, Sankarankovil, claiming right through Will. The respondents have denied the execution of the Will. Therefore, the revision petitioner / the plaintiff has filed an application in I.A.No.113 of 2017 before the trial Court under Section 151 of C.P.C.,



seeking to re-open the case and also filed an application in I.A.No.114 of 2017 under Order 26 Rule 10(1) and Section 151 of C.P.C., seeking to send the documents to the Forensic Science Lab for getting expert opinion. But, the trial Court has dismissed both the applications. Challenging the said orders, the revision petitioner / the plaintiff has come before this Court by way of filing the Civil Revision Petitions.

3. The learned counsel for the revision petitioner submitted that the petitioner has filed a suit for declaration, based on the Will and the respondents have denied the Will. Therefore, the petitioner has filed an application in Cr.M.P.No.250 of 2015 before the trial Court to send the documents to the Forensic Science Laboratory for comparing the signature of his father and that application was allowed on 21.08.2015. But, the petitioner could not produce the admitted signatures and she has not pressed the petition. Subsequently, she has filed a petition in I.A.No.172 of 2016 for amendment and the same was also not pressed by the petitioner. Thereafter, she has filed the applications in I.A.No.113 of 2017, to re-open the case and I.A.No.114 of 2017, to send the documents to the Forensic Science Lab to compare the admitted signature in the mortgage deed executed in the year 1989 and that petitions were dismissed. The learned counsel for the petitioner further submitted that since the petitioner could not get the admitted signature, she could not proceed with the earlier applications filed by her. Subsequently, when the respondent/defendant was in the witness box, he himself admitted that the signature found in the said mortgage deed is that of his father. Therefore, the expert opinion will be helpful to the petitioner to get a decree and hence, the revision petitions have to be allowed. He further submitted that though the trial Court has dismissed the applications on the ground of delay, there is no delay, because in the earlier application filed, the petitioner has not got any document to send for comparison. Subsequently, during the evidence, she wants to send the admitted signature along with the disputed signature to compare. Therefore, the delay stated by the trial Court is not acceptable.

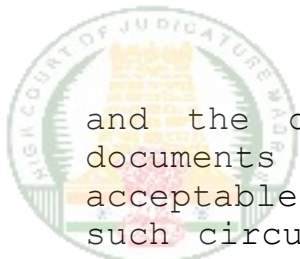
4. In support of his contentions, the learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of **D.V.M.Krishna Rao v. G.Satvathamma** reported in **(2009) 1 MLJ 1359 (SC)** and also relied on the judgment of this Court in the case of **S.Chinnathai vs. K.C.Chinnadurai** reported in **2010 (1) MWN (Civil) 413**. Therefore, mere delay in filing the application for sending the documents to expert opinion may not be a ground for disallowing the claim of the petitioner and the petitioner should not be suffered on the ground of delay alone and she is a poor and an illiterate. Therefore, the civil revision petitions are allowed.



5. The learned counsel for the respondents submitted that the petitioner has filed the suit in the year 2009 and the defendants have denied the execution of the Will in the year 2010 itself by way of filing a written statement. Even though the petitioner has filed an application to send the documents for expert opinion and the trial Court has also appointed the Advocate Commissioner, she has not pressed the application. Subsequently, even after the commencement of the trial and after completing the evidence of the respondents, at the fag end of the trial, she has filed the above applications. It is only to protract the trial. Therefore, the trial Court has rightly dismissed the applications. Further, both the petitioner and the respondents are brothers and sister and the deceased father of the petitioner and the respondents was working in the Government Department. Therefore, the petitioner has not taken any steps earlier and the trial Court has given an opportunity to the petitioner. But, she did not utilise the opportunity and at the fag end of the trial, she has filed the present applications. Hence, the trial Court has rightly dismissed the applications and hence, no interference is required by this Court.

6. Heard the learned counsel on either side and perused the materials available on record.

7. It is an admitted fact that the petitioner and the respondents are the brothers and sister and the petitioner has filed a suit against the respondents claiming that the Will said to have executed by her father and the respondents have denied the execution of the Will and the signature found in the Will. Therefore, earlier, the petitioner has filed an application under Order 26 Rule 10(1) and Section 151 of C.P.C., seeking to send the disputed Will to the Forensic Science Lab for comparing the signature of her father. Even though the trial Court has allowed the application and appointed the Advocate Commissioner, the petitioner did not produce any document containing the admitted signature. Even after the communication from the Forensic Science Lab, the petitioner has not taken any steps to produce those documents and also not pressed that application. After completing the trial, the petitioner was examined and her evidence was also closed. During the respondents' side evidence, he has admitted that the signature found in the said mortgage deed is that of his father. Taking note of the above evidence, she has filed another applications. Further, the learned counsel for the respondents submitted that the Will said to have executed in the year 1996. But the mortgage deed is only in the year 1989. The petitioner is the daughter of the executor of the Will. She has stated that she does not know any document containing the admitted signature of her father. The deceased was working in the Government Department



and the daughter of the deceased has no knowledge about the documents containing the signature of the father are not acceptable and it will not be a ground and it has to be seen. In such circumstances, this Court is of the view that the judgments referred by the learned counsel for the petitioner are not applicable to the present case on hand and no way it will be helpful to the petitioner's case. After closing the evidence of the petitioner, she has filed the applications to re-open the case and to send the documents for Forensic Science Lab. Since the claim made by the petitioner regarding to send the document for Forensic Science Lab is dismissed, the application to re-open the case is also dismissed. Considering the claim made by the petitioner and the relationship of the parties, there is no merit in the revision petitions and the Civil Revision Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

akv

To

The Additional District Munsif Court,
Sankarankovil.

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-11563[F] dated 13/03/2020)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-11494[F] dated 13/03/2020)

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