



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

WEB COPY

CRP (MD)No.1632 of 2017

and

CMP (MD)No.9177 of 2017

1.Selvi

2.A.Nithya

3.A.Divya

... Petitioners

Vs.

A.Ilangovan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 21.04.2017 passed in I.A.No.75 of 2014 in O.S.No.58 of 2010 on the file of the Sub Court, Palani.

For Petitioners : Mr.M.P.Senthil

For Respondent : Mr.D.Venkatesh

ORDER

The respondent/plaintiff filed a suit in O.S.No.58 of 2010 on the file of the Sub Court, Palani for the reliefs of declaration and injunction. The petitioners/defendants have filed written statement in the year 2010 itself. Subsequently, after commencement of trial, the petitioners/defendants have filed an application in I.A.No.75 of 2014 under Order 26 Rule 10(A) CPC to send the disputed document along with the admitted document to get an expert opinion from the forensic department. That petition was dismissed by the trial Court. Challenging the said order passed by the trial Court, the petitioners/defendants have filed the present Civil Revision Petition.

2.The learned counsel for the petitioners would submit that the respondent filed a suit for declaration and injunction. The respondent/plaintiff claimed title through the Will dated 03.02.2006 and the petitioners/defendants denied the execution of the said Will stating that the signature found in the Will is not the signature of Arumuga Goundar, the executor of the Will. Therefore, the petitioners/defendants filed a petition seeking expert opinion by comparing the signature of the executor before the trial Court. But, the trial Court failed to consider the said aspect and dismissed the petition on the ground of delay and laches. Further, he would submit that it is for the plaintiff to prove the Will before the trial Court and he has not taken any steps to send the signature of the executor to forensic department, since the petitioners/defendants



have disputed the said Will. Therefore, the petitioners are constrained to file this Civil Revision Petition challenging the dismissal order passed by the trial Court.

3.The learned counsel for the respondent/plaintiff would submit that the plaintiff claimed title through the Will dated 03.03.2006 and he filed the suit for declaration and injunction. The suit is pending from the year 2010 and only after filing proof affidavit and without conducting cross examination, the petitioners have filed the petition. The trial Court after considering the entire materials, has rightly dismissed the petition and the same need not be interfered with.

4.Heard the learned counsel on either side and perused the materials placed before the Court.

5.Though the petitioners have filed the petition under Order 26 Rule 10(A) CPC to send the Will dated 03.03.2006 seeking expert opinion, since the respondent/plaintiff has filed the suit for declaration based on the Will, it is for the respondent/plaintiff to prove the said Will. In so far as proof of attested document is concerned, Section 68 of the Indian Evidence Act, 1872 clearly states as to how the attested document has to be proved and Section 63 of the Indian Succession Act, 1925 describes as to how a Will has to be executed. Therefore, under these circumstances, it is for the respondent/plaintiff to prove the Will, then only, he is entitled to get the relief of declaration. Even if the opinion of expert comes, it is only a piece of evidence. When Section 68 of the Indian Evidence Act clearly says as to how the attested document has to be proved, the petitioners/defendants without taking steps to prove the Will in the manner known to law, has filed the application, which is not maintainable. Therefore, under these circumstances, this Court does not find any perversity in the order passed by the trial Court and this Civil Revision Petition is liable to be dismissed and accordingly it is dismissed. No costs. Consequently, CMP(MD)No.9177 of 2017 is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Mj

To

The Sub Court, Palani.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-12896[F] dated 23/03/2020)

CRP (MD)No.1632 of 2017

20.03.2020