



C.R.P(PD)No.887 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No.887 of 2020

and

C.M.P.No.4714 of 2020

Sureshkumar

..Petitioner

Vs.

S.Amaranathan

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed on 21.11.2019 in I.A.No.10 of 2019 in O.S.No.72 of 2009 on the file of the Sessions Judge, Mahila Court, Kanchipuram District at Chengalpattu.

For Petitioner : Mr.N.Velayudam

For Respondent : Mr.K.Sukumaran

ORDER

The challenge in this revision is to the order of the trial Court dismissing the application filed by the petitioner seeking appointment of a Commissioner to have the disputed Will dated 07.04.1989 examined by a handwriting expert.



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2. The Suit in O.S.No.72 of 2009 has been filed the respondent herein seeking a declaration of his title, for partition of the 1st item of the suit schedule properties, for declaration of title of the 2nd item and directing the defendant to deliver the vacant possession of the 2nd item of the suit schedule property. The present dispute is confined only to Item No.1 of the suit schedule property.

3. According to the plaintiff, Item No.1 of the suit property was purchased by the plaintiff's mother Tmt.Vilasavthiammal and 1st defendant who is the son-in-law under the sale deed dated 29.11.1988.

4. It is the claim of the plaintiff that his mother Tmt.Vilasavathiammal had executed a Will on 07.04.1989 bequeathing her half share in the suit Item No.1 to the plaintiff. On the basis of the said Will, the plaintiff claims partition of his half share of suit Item No.1. The suit is being resisted by the defendant by raising various contentions including the contention that the Will dated 07.04.1989 is not valid and that the said



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testator namely Tmt.Vilasavathiammal had executed a subsequent Will on 22.11.1999 bequeathing her half share in the suit 1st item to 1st defendant, who is the co-purchaser and son-in-law of Tmt.Vilasavathiammal.

5. After the trial commenced and after the evidence was recorded, the defendant came up with the instant application seeking appointment of Commissioner to have the signature in the Will dated 07.04.1989 which has been marked as Ex.A4 examined by the handwriting expert. This application was opposed by the respondent/plaintiff contending that the application is belated, the application is *malafide*, the applicant/1st defendant has in fact admitted the execution of the Will of Tmt.Vilasavathiammal, during his cross examination.

6. Apart from the above, it is also pointed out that the defendant has not produced any admitted signature of Tmt.Vilasavathiammal, which emanated during the relevant period for comparison.



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7. The learned District Judge who heard the application, rejected the claim and dismissed the application on the ground that it is belated. He also faulted the defendant/petitioner for not producing any admitted signature for comparison. The learned District Judge also pointed out that the defendant as D.W.1 has admitted that he has not denied execution of Ex.A4 by Tmt.Vilasavathiammal and its attestation by the two witnesses. Pointing out to the cross examination of P.W.1 by the defendant, the learned Trial Judge concluded that the execution of the Will has in fact been admitted by the defendant. Therefore, the application for comparison, according to the trial Judge, has been filed only with a view to drag on the proceedings. On the above said conclusion, the learned District Judge dismissed the application.

8. I have heard Mr.N.Velayudam, learned counsel appearing for the petitioner and Mr.K.Sukumaran, learned counsel appearing for the respondent.

9. Mr.N.Velayudam, learned counsel appearing for the petitioner



would submit that the learned District Judge was not right in dismissing the application on the ground of delay. He would point out that an admitted contemporaneous signature of Tmt.Vilasavathiammal is available in the records itself and therefore, it would not have been very difficult for the Court to have the comparison carried out by the expert. He would also point out that the execution of the Will by Tmt.Vilasavathiammal was disputed at the earliest point of time in the written statement itself and therefore, the learned trial Judge was not right in concluding that the execution of the Will was not specifically denied.

10. Contending contra, Mr.K.Sukumaran, learned counsel appearing for the respondent has drawn my attention to the cross examination of P.W.1 by the defendant's counsel as well as the cross examination of D.W.1 by the plaintiff's counsel to contend that the execution of Ex.A4 - Will was almost admitted by the defendant. The learned counsel would also point out that no contemporaneous document has been placed by the defendant to enable comparison. He would also point out that the application was filed ten years after the institution of the suit. According to



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him, the object is only to delay the disposal of the suit.

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11. I have considered the rival submissions. Of course, every party has a right to place the best evidence before the Court but when such party seeks aid of the Court to have the documents compared by an expert, the party who seeks aid of the Court must show that he/she is diligent in prosecuting the case in the Court. Any negligence or carelessness would cost dearly. The suit is of the year 2009 and the same was pending for nearly ten years; the written statement was filed in the year 2011; till 2019 till the examination of the witnesses was completed, the defendant did not seek to have the Will examined by the expert. It is only after the evidence was completed, this application came to be filed, which, if allowed, in my opinion would clearly prejudice the interest of the plaintiff. I do not want to dwell deep into the evidence that has been placed before this Court as the same would prejudice the parties in the final hearing of the case.

12. Suffice to point out that the evidence that is on record would



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show that the defendant has not very seriously disputed the execution of the Will and I am therefore of the opinion that the trial Court was right in dismissing the application and I do not see any error or material irregularity in the order of the trial Court.

13. In view of the above, this Civil Revision Petition fails and it is accordingly, dismissed. It is made clear that the trial Court will dispose of the suit without in any manner being influenced by the observation made either in this order of mine or in the order impugned in the Revision. Considering the fact that the Suit is of the year 2009, the trial Court is required to dispose of the Suit within a period of six months from the date of receipt of either the web copy or the certified copy of this order. No costs. Connected civil miscellaneous petition is closed.

30.11.2021

jas/sni
Index:No
Internet:Yes
Speaking order



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R.SUBRAMANIAN, J.

jas/sni

To:-

The learned Sessions Judge,
Mahila Court,
Kanchipuram District at Chengalpattu.

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and

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