

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

CORAM :

**THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU**

O.S.A. No. 146 of 2021
and
C.M.P. No. 6608 of 2021

Smt. Akila Vijayakumar

... Appellant

Vs

1. Smt. Saraswathy Bhuvarahan
2. Smt. Uma Ravi
3. Smt. T.Srilatha
4. Smt. Srisudha Gananaprakasam

... Respondents

PRAYER : Original Side Appeal filed under Order XXXVI Rule 9 of the Madras High Court Original Side Rules read with Clause XV of the Letters Patent, praying to set aside the fair and decretal order dated 02.03.2021 in Application No. 1104 of 2019 in T.O.S. No. 1 of 2018 on the file of this Hon'ble Court.

For Appellant : Mr. N.L.Rajah
Senior Counsel

For Respondents : Mr. R.Viduthalai
Senior Counsel
For Mrs. A.V.Bharathi (For Caveator)

J U D G M E N T

(Judgment of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2. This Appeal has been filed against the order dated 02.03.2021 denying the appellant, who is the original Petitioner, her right to file objection to the Expert's Opinion of the Forensic Department by the Appellant.

3. The Original Petitioner, viz., Smt.Akila Vijayakumar, who is daughter of the deceased viz., Sri. G.Bhuvarahan, filed a Petition in O.P. No. 882 of 2017 before this Court seeking grant of Letters of Administration with the Will annexed. In the said Petition, mother of the Appellant, viz., Smt. Saraswathy Bhuvarahan and other siblings have been made as parties, which has been converted as a Testamentary Original Suit in T.O.S. No. 1 of 2018, as other Respondents have filed objections. In the said Testamentary Original Suit, an Application in Application No. 4732 of 2019 in T.O.S. No. 1 of 2018 was taken out by the First and Second Defendants to appoint an Advocate Commissioner to receive original Will dated 27.11.2007 along with (1) Settlement Deed dated 10.01.2009, (2) Passport dated 19.06.2007 and (3) Two Rental Agreements dated 23.09.2010 and 01.11.2010 of Late G.Bhuvarahan for verification of disputed signature found in the Will and hand over the same to the Forensic Department for

their report. The said Application was allowed appointing Advocate Commissioners to take the document to the Forensic Department and to get opinion of the handwriting expert by comparing the disputed signature found in the Will with other documents. The said documents were compared and opinion dated 18.10.2019 was given by the experts in the Forensic Department.

Since the opinion given by the Department is not in favour of the Appellant, the Appellant wanted to file her objection and the same was denied by the Learned Single Judge stating that the Appellant is at liberty to raise objection only at the time of marking the documents as exhibits. Aggrieved thereby only, this Appeal has been filed.

3. Heard Mr. N.L.Rajah, Learned Senior Counsel appearing for the Appellant and Mr. R.Viduthalai, Learned Senior Counsel appearing for the Caveator.

4. The order of the Learned Single Judge is liable to be set aside for the reason that the Appellant has got right to file objection to the Expert's Opinion of the Forensic Department. Without filing objection, the Appellant may not have a chance to cross-examine any witness. Therefore, the finding of the Learned Single Judge that the Appellant has got liberty to raise her objection only at the time of

marking the documents as exhibits is not correct and therefore, it has to be set aside. Fair opportunity should be afforded to the Appellant, especially, with regard to proving her father's Will.

5. Taking into consideration that the matter is pending for the past two years, it is appropriate to direct the Appellant to file objections on or before 26.04.2021, failing which the right to file objections would stand closed. After filing objections, recording of evidence shall continue before the Learned Master from 29.04.2021 onwards, on day to-day basis and the evidence shall be completed by 30.06.2021 and thereafter, it has to be posted before the Learned Single Judge for hearing and disposal.

6. With the above directions and observations, the impugned order dated 02.03.2021 made in Application No. 1104 of 2019 in T.O.S. No. 1 of 2018 is set aside and the Appeal is allowed, accordingly. Consequently connected Miscellaneous Petition is closed. No costs.

[N.K.K.,J.] [P.D.A.,J.]
01.04.2021

Maya/Sai

Index: Yes/No

Internet: Yes/No



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N.KIRUBAKARAN, J.
and
P.D.AUDIKESAVALU, J.

Maya

To

The Sub Assistant Registrar,
Original Side Section,
High Court of Madras,
Chennai.



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