

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.08.2021

Delivered on : 03.09.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) Nos. 1665 & 1668 of 2021
and C.M.P. No. 12916 of 2021

1.G.Bhoopathi
2.G.Jamuna Bhai
3.G.Gunasekaran
4.G.Sivaraj
5.G.Meenakshi Sundaram
6.G.Gajaraj

... Petitioners

Versus

1.G.Thulasingham
2.G.Thirumani
3.G.Madhavan
4.Kalyani
5.Banumathy

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of the learned I Additional District Judge, Thiruvallur dated 23.04.2021 passed in I.A. Nos.1 & 2 of 2020 in A.S. No.34 of 2015 by allowing the above revision with costs.

For Petitioners
(in both petitions)
For Respondents
(in both petitions)

: Mr. C.Umashankar

: Mr. J.Hudson Samuel
for M/s. Paul and Paul

COMMON ORDER

C.R.P. (PD) No.1665 of 2021 is filed against the order dated 23.04.2021, passed in I.A. Nos.1 of 2020 in A.S. No.34 of 2015 and C.R.P. (PD) No.1668 of 2021 is filed against the order dated 23.04.2021, passed in I.A. Nos.2 of 2020 in A.S. No.34 of 2015.

2. The respondents 1 and 2 as plaintiffs, filed a suit in O.S. No.595 of 2000, against the petitioners and respondents 3 to 5, seeking partition of 2/3rd share in the suit properties. The case of the respondents 1 and 2 is that the suit properties belonged to one Gopal Naicker. He had three daughters and two sons. The deceased first defendant Rajeswari Ammal, Indirani Ammal and Neelavani were his daughters. Indirani Ammal died issue-less and Neelavani died as spinster. The respondents 1 and 2 are his sons. Gopal Naicker died on 30.10.1977. The respondents 1 and 2 and the deceased first defendant Rajeswari Ammal, were the surviving legal heirs of Gopal Naicker and inherited the suit properties. The deceased first defendant Rajeswari Ammal had six children and they are the petitioners herein. The petitioners have not come forward to effect partition. Therefore, the suit was filed. The petitioners have taken up a plea before the trial Court that Gopal Naicker had executed Ex.B2-Will, in favour of Rajeswari Ammal and after the death of Gopal

Naicker, Rajeswari Ammal had become the absolute owner of the suit properties and was in possession and enjoyment of the suit property. Therefore, the petitioners contented that the respondents are not entitled for any share in the suit properties. The learned trial Judge, on the basis of the oral and documentary evidence produced, held that Ex.B2-Will, was not proved and negated the claim made by the petitioners that they are the absolute owners of the properties and decreed the suit for partition ordering allotment of 1/5th share of the properties to each plaintiffs / respondents 1 and 2 and 1/5th share each to defendants 9 and 10. Against the said judgment, the petitioners have preferred an appeal in A.S. No.34 of 2015. When the appeal is pending, the petitioners filed I.A. Nos.1 and 2 of 2020 to reopen the case in A.S. No.34 of 2015, to appoint Forensic Expert to compare the signature of Gopal Naicker as found in in Ex.B2 with the signatures in Exs.A2 to A5 and B21 and to issue subpoena to Deputy Tahsildar (ULT) Poonamallee, to produce entire original file relating to ULT case No. 141 of 1985, Poonamallee, Sriperumbudur Taluk, Chengalpattu District and depute a person to give oral evidence relating to the said file. These petitions were opposed by the respondents.

3. The learned Appellate Judge, after considering the rival submissions, dismissed both the petitions. Against the dismissal of both the petitions, these

civil revision petitions have been preferred.

4. Learned counsel for the petitioners submitted that the trial Court has not believed Ex.B2-Will for the reason that the petitioners have not taken any steps to prove the signature of Gopal Naicker. The Court has every power to compare the signatures under Section 73 of the Indian Evidence Act. When there is any doubt, the Court could have sent the Will to the Handwriting Expert's opinion. It is now known that in the enquiry proceedings in ULT case No.141 of 1985, summons to attend the enquiry was issued to Thulasingham and Rajeswari. Both attended the enquiry. The Will executed by Gopal Naicker on 09.06.1977 was produced by Rajeswari. Therefore, the first plaintiff was well aware of the Will dated 09.06.1977. However, the learned I Additional District Judge, Thiruvallur, without considering the genuine claim of the petitioners, had dismissed both the petitions. Therefore, the orders have to be set aside and the petitioners should be given an opportunity to prove the Will by summoning the aforesaid document and also sending the Will to the opinion of the Handwriting Expert.

5. In response to the submissions of the learned counsel for the petitioners, the learned counsel for the respondents submitted that the suit was

filed in the year 2000 and disposed only on 13.02.2015. The respondents 1 and 2 have challenged the genuineness of the Will and contended that the signature of the Will is not the signature of Gopal Naicker. These petitions are filed only with an intention to protract the proceedings. One of the legal heirs of Rajeswari Ammal namely Madhavan had also disputed the genuineness of the Will. The learned trial Judge has elaborately considered the execution of the Will and held that the execution of the Will is not proved. The plaintiffs / respondent 1 and 2 are aged more than 90 years but still they are not able to reap the fruits of decree. Considering the long delay, the learned appellate Judge dismissed the petitions stating that the petitions are filed only to protract the proceedings. Therefore, the learned counsel for the respondents prays for dismissal of these civil revision petitions.

6. Learned counsel for the petitioners replied that delay is not the only ground for denying the genuine relief which was sought. The parties should have given reasonable opportunity to put forth their case. The first appeal is the continuation of the original suit proceedings. The petitioners are entitled to produce additional evidence in the appeal.

7. Considered the rival submissions. The main reason for filing I.A. Nos.1 and 2 of 2020 is that the signature of Gopal Naicker in Ex.B2-Will has to be proved and that the first respondent knew very well about the existence of the Will and he attended the enquiry in the ULT Case No.141 of 1985. Reading of the judgment in O.S. No.595 of 2020, shows that the attestors of the Will were not alive and therefore D.W.5 and D.W.6 were examined to prove the signature of Gopal Naicker in the Will. During the course of cross examination, D.W.5 stated that he did not see Gopal Naicker signing and therefore, his evidence was rejected. Though D.W.6 stated that he saw Gopal Naicker signing in Ex.B2, his evidence was also rejected for the reason that there is no evidence produced to show his acquaintance with Gopal Naicker. He has also not deposed about particulars of Sababathi. He has not produced proof to show that he is a stamp vendor. For all these reasons, the evidence of D.W.6 was not accepted. There are other reasons, such as, there is no indication in Ex.A1 letter that Gopal Naicker had the intention to execute the Will in favour of the first defendant alone; there is no indication in Exs.A2 to A5 letters written by Gopal Naicker that first defendant's husband saved the suit property from Court auction by spending his amount; there is no indication with regard to this claim in Exs.B28 and 29. Based on these reasons, the learned trial Judge has concluded that the Will has not been proved.

8. Of course, the suit was filed in the year 2000 and no steps have been taken before the trial Court to refer the disputed Will for the opinion of handwriting experts. There are some other factors which deserve consideration of this Court to decide this issue. There is no dispute with regard to the fact that the suit properties are the properties of Gopal Naicker. Admittedly, the defendants are in possession of the suit properties. The defendants claim that Gopal Naicker executed a Will in respect of the suit properties in favour of his daughter Rajeswari Ammal on 09.06.1977. He died on 31.10.1977. The genuine question which arises for consideration in a person with an ordinary prudence is that why the respondents 1 and 2 / plaintiffs have not filed a suit for partition immediately after the death of Gopal Naicker on 31.10.1977. They have waited so long, nearly for 23 years for filing the suit. This long delay raises a genuine doubt that they may be aware of the existence of the Will dated 09.06.1977. The defendants have produced Exs. B.1 to B.48 documents before trial Court for proving their possession and enjoyment of the properties. In the light of the long delay in filing the suit for partition and in the light of the possession and enjoyment of the suit properties by the defendants, this Court is of the considered view that the petitioners should have been given an opportunity to prove the Will by referring it to the handwriting expert for comparison, with the admitted signatures which are available in the Court in

the form of Exs.A2 to A5 and B.21. It is also relevant to note as to whether the first plaintiff knew about the Will when he participated in the ULT Case No.141 of 1985. The production of original file relating to ULT Case No.141 of 1985, will give an answer to this issue.

9. In the interest of rendering substantial justice to the parties, this Court is of the view that both the Interlocutory Applications filed in I.A. No.1 and 2 of 2020 should have been allowed. However, the learned Judge has taken a different view of the matter and dismissed those petitions. For the reasons aforesaid, this Court is of the view that these applications need to be allowed for the purpose of proving the case of the petitioners and that the respondents will have an opportunity to resist the petitioners' claim by cross examining witnesses or by producing other appropriate oral and documentary evidence.

10. In this view of the matter, the judgment and decreetal orders passed by the learned I Additional District Judge, Thiruvallur, in I.A. Nos.1 and 2 of the 2020 in A.S. No.34 of 2015, dated 23.04.2021, is hereby set aside and these civil revision petitions are allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed. Considering the fact that suit was filed in the year 2007 and the appeal is pending from the year 2015, the learned

I Additional District Judge, Thiruvallur, is directed to take immediate steps to send the disputed Will along with Exs.A2 to A5 and B.21 to the handwriting expert's opinion and examine the witness and dispose the case as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

03.09.2021

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Index: Yes / No

Speaking order / Non speaking order

Internet : Yes / No

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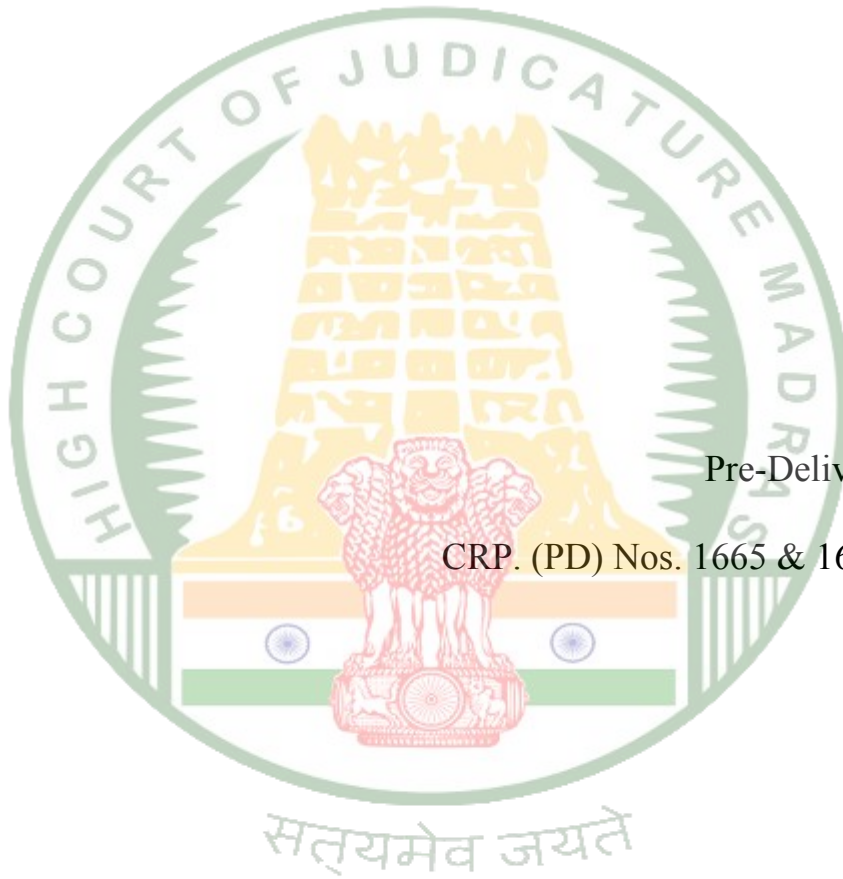
I Additional District Judge, Thiruvallur



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G.CHANDRASEKHARAN. J.,

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Pre-Deliver order in
CRP. (PD) Nos. 1665 & 1668 of 2021

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