



C.R.P. (PD) Nos. 1721 & 1722 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 19.11.2021

CORAM:

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

C.R.P.(PD).Nos.1721 & 1722 of 2017

and

C.M.P.Nos.8154 & 8155 of 2017

M.Rajendran

...Petitioner in both petitions

Versus

Muthulakshmi

...Respondent in both petitions

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 09.02.2017 made in I.A.Nos.105 & 106 of 2016 in O.S.No.152 of 2015 on the file of the District Munsif Court, Sankari.

For Petitioner
(in both petitions)

: Mr.N.Manokaran

For Respondent
(in both petitions)

: Mr.V.S.Kesavan



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COMMON ORDER

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These Civil Revision Petitions have been filed by the petitioner to set aside the fair and decretal order dated 09.02.2017 made in I.A.Nos.105 & 106 of 2016 in O.S.No.152 of 2015 on the file of the District Munsif Court, Sankari.

2.Heard the learned counsel for the petitioner as well as respondent.

3.The learned counsel for the petitioner would submit that the petitioner herein is the plaintiff who filed O.S.No.152 of 2015 for declaration that he is the absolute owner of the suit property by virtue of Will dated 27.03.2014 and also for permanent injunction, restraining the defendant and his men in any way from interfering with his peaceful possession and enjoyment over the suit property. The learned counsel would submit that in the written statement filed by the defendant denied the execution of Will and contended that it is a fabricated one and based on that the defendant filed I.A.Nos.105 & 106 of 2016 for the Expert opinion to compare the signature in the alleged Will and the signature of the Executor of the Will in the plaint and vakalat in the previous suit.

4.The trial Court after considering arguments of both the parties, allowed the petition for expert opinion. Aggrieved by the order passed in I.A.Nos.105



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& 106 of 2016, this Civil Revision Petition has been filed.

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5. According to the learned counsel for the petitioner it is for the petitioner/plaintiff to prove the execution of the Will, following the procedure prescribed under Section 68, 69 & 71 of Evidence Act and as such, the expert's opinion is not necessary in the present case.

6. Per Contra, the learned counsel for the respondent would submit that when the respondent/defendant specifically denied the signature and denied the execution of the Will and it is fabricated one, the trial Court has rightly allowed the petition filed by them.

7. The learned counsel for the petitioner would rely upon the Judgment of this Court in *Periathal & Others Vs. Gomathi & Another* reported in 2018 5 *Law Weekly* 370 to substantiate his contention. This Court is of the opinion that when the plaintiff filed the suit based on a Will, the plaintiff has to prove the Will. According to the procedure envisaged under Section 68, 69 and 71 of Evidence Act, to prove the Will, the expert opinion is not necessary and further,

S.KANNAMMAL, J.,



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the expert opinion is not a conclusive proof. Hence, this Civil Revision Petition is allowed by setting aside the order of the trial Court.

8. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently connected miscellaneous petitions are closed.

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Index: Yes/ No
Speaking Order / Non-Speaking Order

To

The District Munsif Judge,
Sankari.

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