

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.373 of 2017

and

C.M.P.No.1652 of 2017

1.M.Budhurnisa

2.J.Kamrunisa

3.R.Najumunisa

4.M.Rahamedthunisa

.. Petitioners

Vs.

1.Syed Ali Basha

2.S.Barkathunisa

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.09.2016 made in I.A.No.468 of 2016 in O.S.No.93 of 2010 on the file of the Sub Court, Attur, Salem District.

For Petitioners : Mr.V.Meenakshisundaram

For Respondents : Mr.C.Prabakaran

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 08.09.2016 made in I.A.No.468 of 2016 in O.S.No.93 of 2010 on the file of the Sub Court, Attur, Salem District.

2.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents and perused the entire materials on record.

3.The petitioners who are the plaintiffs in O.S.No.93 of 2010, filed the said suit for partition and injunction against the respondents. The respondents filed written statement on 02.11.2010 and additional written statement in the year 2011. The petitioners filed reply statement on 09.11.2011. Trial commenced. The petitioners and respondents examined their witnesses. At that stage, the petitioners filed I.A.No.468 of 2016 under Order XXVI Rule 10A and 10B and Section 151 of C.P.C., for appointment of Advocate Commissioner to take two documents for comparison of the disputed signature with admitted signature. The respondents filed counter affidavit. The learned Judge after considering the averments in the affidavit and

counter affidavit, dismissed the I.A.

4. Against the said order dated 08.09.2016 made in I.A.No.468 of 2016, the petitioners have come out with the present Civil Revision Petition.

5. From the materials available on record, it is seen that petitioners have disputed the signature of their father in the Will dated 25.11.2005, which was marked as Ex.B5 by the respondents. According to petitioners, the 1st respondent forged the signature of their father in Ex.B5 and fabricated the Will. The 1st respondent during the trial marked Ex.B3/sale deed dated 19.12.2005 executed by their mother in favour of 1st respondent, in which father of the parties signed as witness. The signature of father of parties in Ex.B3 is admitted by both the parties. According to 1st respondent, their father is not in the habit of signing in the same nature and signature of their father in the first page and last page in Ex.B3 differs. Therefore, no purpose will be served by sending the document for verification. The learned Judge considering Ex.B5/Will dated 25.11.2005, verified the signature of the father of the parties in Ex.B5/Will and held that in each page the signature of father of the parties differ. The learned Judge on such finding dismissed the said application and held that no useful purpose will be served by sending the

document to hand writing expert. The learned Judge failed to see that signature in Ex.B5/Will dated 25.11.2005 is disputed by the petitioners, whereas, signature in Ex.B3/sale deed dated 19.12.2005 is admitted by both the parties. When the signature in Ex.B3/sale deed dated 19.12.2005 is admitted by both the parties, the learned Judge ought to have considered the signature in Ex.B3/sale deed dated 19.12.2005 with disputed signature in Ex.B5/Will dated 25.11.2005 to come to a conclusion about the genuineness of signature.

6.The Court has power to compare the disputed and admitted signature and decide the genuineness of signature in disputed document. In view of the same, the impugned order of the learned Judge is liable to be set aside and is hereby set aside. I.A.No.468 of 2016 is remitted to the Sub Court, Attur, Salem District. The learned Subordinate Judge, Attur, Salem District is directed to compare the admitted signature in Ex.B3/sale deed dated 19.12.2005 with disputed signature in Ex.B5/Will dated 25.11.2005 and come to a conclusion with regard to genuineness of signature in Ex.B5/Will dated 25.11.2005. If the learned Subordinate Judge, Attur, Salem District, is of the opinion that both Exs.B3 & B5 must be sent to hand writing expert to obtain opinion, the learned Subordinate Judge, Attur, Salem District, is at liberty to

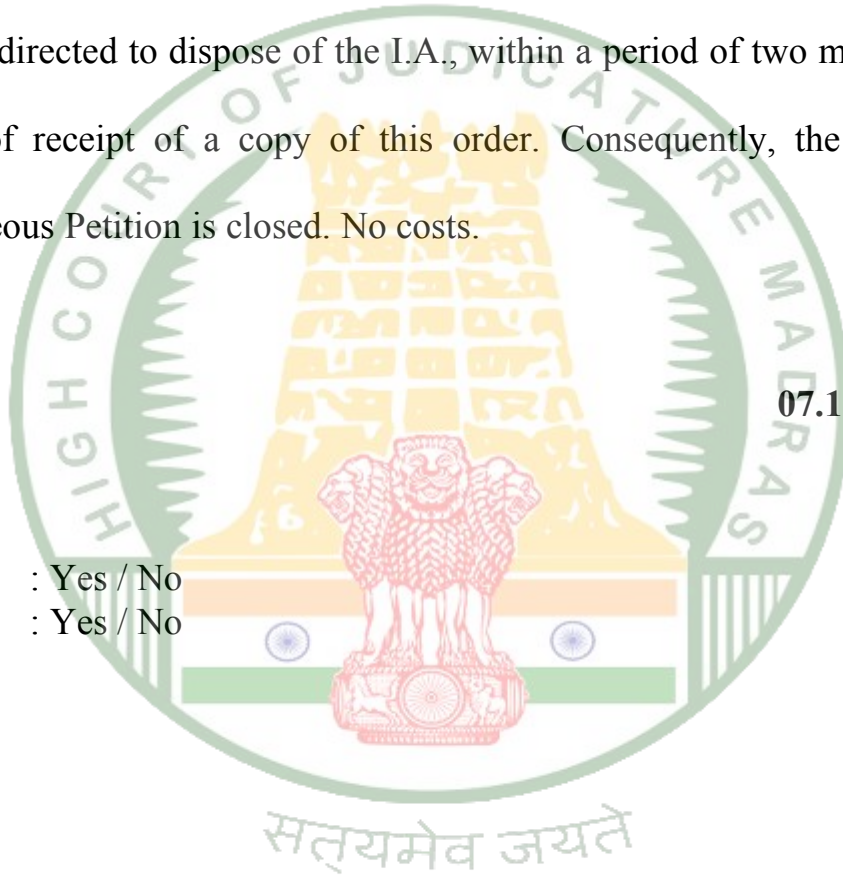
appoint an Advocate Commissioner to take the documents for comparison and to get opinion from the hand writing expert.

7. With the above direction, this Civil Revision Petition is allowed. The I.A. is of the year 2016 and the learned Subordinate Judge, Attur, Salem District is directed to dispose of the I.A., within a period of two months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

07.10.2021

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Index : Yes / No
Internet : Yes / No

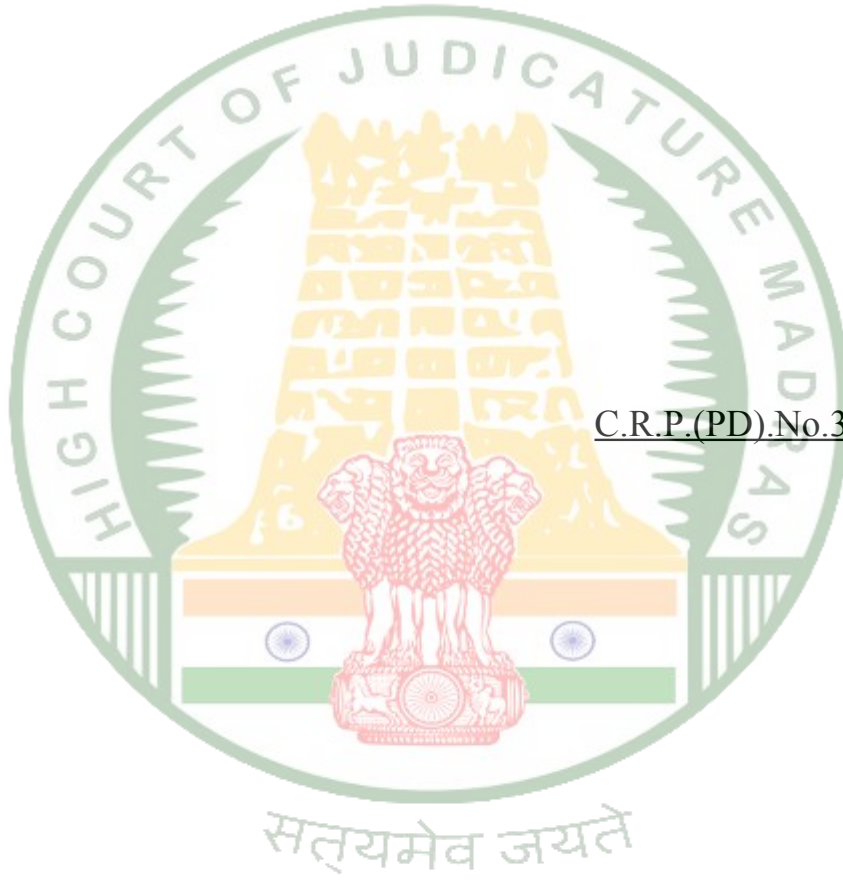


To

The learned Subordinate Judge,
Attur,
Salem District

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V.M.VELUMANI, J.
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