

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P(PD)No.850 of 2017
& C.M.P.No. 4209 of 2017

1. Jothimani
2. Esthar
3. Ramani
4. Gunaselli
5. Chithradevi
6. Prabhavathi
7. Kalavathi
8. Umarani

.... Petitioners

Vs

1. M.Samiyappan
2. M.Jothi Bakkiyam
3. M.Alexander
4. Baby

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 20.01.2017 made in I.A.No.939 of 2016 in I.A.No.163 of 2016 in O.S.No.412 of 2013 on the file of the First Additional District Munsif Court, Erode.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.V.Anandha Murthy

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 20.01.2017 passed by the learned First Additional District Munsif, Erode, in I.A.No.939 of 2016 in I.A.No.163 of 2016 in O.S.No.412 of 2013, thereby allowing the petition to send for the original records in O.S.No.524 of 1986 containing the signature of the deceased Muthaiyan.

2. The petitioners are the defendants in the suit filed by the respondents 1 to 3 herein for declaration declaring that they are the absolute owners of the suit property by virtue of the Will dated 10.09.2000 executed by the deceased A.M.Muthiyan. The petitioners filed written statement denying all the avernments and the allegations made in the plaint. They also specifically contended that in the Will dated 10.09.2000, the signature of the said Muthaiyan is forged and the Will deed is not drafted in stamp paper. In contra, the Will deed is drafted in a conquer sheet and all the recital in the sale deed dated 10.09.2000 are false.

3. The respondents 1-3 are being the plaintiffs, they filed petition in I.A.No.163 of 2016, to compare the signature of the Will dated 10.09.2000 with an admitted signature of the said deceased Muthaiyan. While pending the said application, the respondents 1 to 3 again filed petition in I.A.No.939 of 2016 to send the original documents in O.S.No.524 of 1986 containing the signature of the deceased Muthaiyan. The trial Court allowed the said petition and aggrieved by the same, the petitioners filed this present civil revision petition.

4. The learned counsel appearing for the petitioners would submit that the Will has to be proved in the manner known to law. The experts opinion cannot be considered to prove the Will. Though the petitioners had taken specific plea that the signature found in the Will is forged one, it has to be proved under Section 63 of Indian Succession Act and 68 to 71 of the Indian Evidence Act. In support of his contention, he relied upon the judgment (2018) 5 LW 370 in the case of *Periathal and Ors. vs. Gomathi and Ors.*

5. Per contra, the learned counsel appearing for the respondents would submit that when the petitioners categorically denied the signature and averred that the signature found in the Will dated 10.09.2000 is forged one as such, the petitioners are bound to prove the same by getting opinion from the hand writing experts. Therefore, the respondents 1 to 3 filed petition for seeking experts opinion on the Will dated 10.09.2000 with an admitted signature. The signature of the deceased Muthaiyan found in the original document in pursuant to the suit filed in O.S.No.524 of 1986 on the file District Munsif, Erode. He further submitted that even though the time gap between the admitted signature and the disputed signature is at large, it can be sent for hand writing experts. In support of his contention he relied upon the judgment reported in **2020 SCC Online Mad 6235** in the case of **P.Indiran Vs. M.Balakrishnan and ors.**, as follows :-

"12. Contemporaneous means occurrence at same period of time. No specific measure could be assigned to the element of contemporaneity. One of the famous book Scientific Examination of Questioned Documents, states that material written two or three years before or after the disputed writing serve as

satisfactory standards.

....e) The gist of the experts opinion, emerging from the above report, is to the effect that it is not always necessary to have contemporaneous handwritings/signatures for comparison. However, as a general rule, it would be desirable to undertake comparison of admitted handwritings/signatures with disputed handwritings/signatures which fall within the range of 2 or 3 years from each other. Therefore,

(1) there can be no hard and fast norm as to when comparison can or cannot be undertaken owing to the time lag between the two sets of handwritings/signatures. Various other factors would have to be taken into consideration, as opined by the experts, quoted herein before.

(2) Each case would turn upon its own facts and circumstances relating to the time lag, the change in the handwriting/signature, the capability of correlating the two set and ultimately, the opinion of the expert himself as to whether the two sets can be compared.

(3) It is therefore not open to the Court to refuse to entertain an application seeking comparison of disputed handwritings/signatures

with admitted handwritings/signatures on the ground of a long lapse of time between the two sets of handwritings/signatures.

f) There are many factors which have to be taken into consideration in effecting a comparison of the two signatures, and although a Court could apply its own eyes and its own mind to determine whether a particular signature is resembling another it would be going beyond the ordinary limits of the capacity of a Court to constitute itself as a Handwriting Expert and try to compare the signature without all the gadgets and devices which are available to a Handwriting Expert, besides the lack of expert knowledge which a Handwriting Expert possesses.

g) No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case.

h) It may however be noted that an expert opinion under Section 45 of the Act of 1872 is not binding on the Court as it is only advisory in nature. Whether such an opinion should be admitted and how much weight should be given to it are aspects which would ultimately lie within the domain of the Court, as evidence of an expert is liable to be interpreted like any other evidence.

i) It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long."

6. Heard Mr.N.Manokaran, learned counsel appearing for the petitioners and Mr.V.Anandhamurthy, learned counsel appearing for the respondents.

7. The present Civil Revision Petition is arising out the order thereby allowing the petition to send for the original document in O.S.No.524 of 1986, along with the Will dated 10.09.2000 for hand writing expert's opinion. The respondents 1 to 3 herein filed suit for declaration on the strength of the Will dated 10.09.2000 executed by one A.M.Muthiyan. The petitioners have filed their written statement and denied all avernments made in the plaint and stated that the Will deed 10.09.2000 is forged one. Therefore, the respondents 1 to 3 filed petition to send the same to hand writing expert's opinion with the admitted signature. While pending the said application, the respondents 1 to 3 also filed another petition to send for the documents in O.S.No.524 of 1986 to compare with the Will dated 10.09.2000.

8. As rightly pointed out by the learned counsel appearing for the petitioners, to prove the Will in question it has to be proved as per the requirements of the law under Section 63 of the Indian Succession Act and under Sections 68 to 71 of the Indian Evidence Act. In this regard, the learned counsel appearing for the respondent relied upon the

judgment reported in **(2018) 5 LW 370** in the case of **Periathal and Ors. vs. Gomathi and Ors.**, which reads as follows :-

"9. In this connection, he placed reliance upon the decision reported in : 1988 (2) Ker L.J. 512 (R. Saraswathy Vs. Bhavathy Ammal & another). Accordingly, on a perusal of the abovesaid decision, as outlined therein, the opinion of the expert as to the identity of the signature of the testator in the Will is not relevant and the position of law on the above aspects had been detailed in the abovesaid authority as follows:

"Evidence Act, 1872, Sections 45, 68, 69, 70 and 71-Will-Execution-Expert opinion-Opinion of an expert as to the identity of signature of the testator inn the Will is not relevant."

"7. It is in this backdrop the question whether the opinion of an expert as to the identity of the signature of the testator in the will is relevant to decide the issue, whether the will in dispute has validity been executed. When would the opinion of an expert be relevant, is stated in Section 45 of the Evidence Act. It provides that when the Court

has to form an opinion upon a point of foreign law, or of science, or art, or as to the identity of handwriting or finger-impressions, the opinions upon that point, of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger-impressions are relevant facts. The expert must necessarily be one who has acquired certain special knowledge, skill or experience in any science or art or profession. The opinion of an expert therefore is not relevant where the subject-matter of enquiry is not one pertaining to any of the matters enumerated under the section. In other words an expert witness may not be asked to state his opinion upon a question of fact which is the very issue that requires decision on other evidence, the production whereof is controlled by the other provisions of the Evidence Act. For instance an expert cannot be allowed to give his opinion upon the construction of documents because this, being a matter of law, is a question solely for the court to decide. Concisely stated:

"It is only where the matter inquired of lies within the range of the peculiar skill and experience of the witness, and is one of which the

ordinary knowledge and experience of mankind does not enable them to see, what inference should be drawn from the facts, that the witness may supply opinion as a guide".

Kennedy v. People, 39 NY 245 That means, the opinion of experts is not admissible in regard to matters upon which the court can form a judgment from other evidence and circumstances.

8. In regard to the execution of a will, the Court has to form a judgment from the evidence, the propounder may let in following the procedure prescribed under Sections 68, 69 and 71 of the Evidence Act. Even at the risk of repetition I would in this context refer to Section 63(a), according to which the first stage in the execution of the will can be accomplished by signing the will by adopting any one of the three methods namely, (1) the testator putting his signature, (2) the testator putting his mark or some other person putting his signature in the presence of the testator and under his direction. That means in order to say that a will has validly been executed it is not necessary that it should contain the signature of the testator; but on the

other hand it is enough if the testator affixes his mark or some other person signs the document in the presence of the testator and under his direction. And therefore, in a case where the expert opines that the signature seen on the will is not that of the testator but at the same time the execution has validly been proved, can the Court still hold that the will is not valid relying on the opinion of the expert in preference to the uncontroverted evidence proving the execution of the will? My answer is no, because as already noted, under law to hold that a will is valid, it is the execution of the will within the meaning of Section 63, Succession Act that is required to be proved unlike in the case of an ordinary document where under Section 67, Evidence Act the signature should be proved. It may in this context be relevant to note that a propounder can possibly contend that the signature which is opined to be not that of the testator by the expert, in fact is not his signature but only a mark put by him within the meaning of Section 63(a), Succession Act. The Court therefore has no need to form an opinion on the question as to identity of the signature of the testator. This being the position in law, in my judgment, the opinion of

the expert as to the identity of the signature of the testator in a will is not a relevant fact.

9. The learned counsel for the petitioner however, argues that the opinion of the expert may be relevant at least, to test the veracity of the testimony of the attestors. What the attestors are expected to speak under Section 68, Evidence Act is only the factum of execution of the will within the meaning of Section 63, Succession Act. They are not obliged under law to testify the identity of the signature of the testator. There is therefore no substance in this argument and hence rejected."

10. In the light of the abovesaid factors, when the revision petitioners being the propounders of the Will owe the duty to establish the genuineness of the Will in question as per the requirements of law as provided under Sections 63 of the Indian Succession Act and 68 to 71 of the Indian Evidence Act, it is found that the opinion of the expert as such may not tilt the scales in arriving at that conclusion as to the authenticity of the Will in question. The same could only be firmly adjudicated based upon the evidence to be adduced by the revision petitioners as per the requirements of law. In such view of

the matter, it is found that as rightly argued by the petitioners' counsel, the endeavour of the first respondent/plaintiff in subjecting the Will in question for expert's scrutiny may not loom large in determining the issues involved between the parties as regards the proof of the Will in question."

The Will is required to be proved under Section 63 of Indian Succession Act and Sections 68 to 71 of the Indian Evidence Act. A propounder can possibly contend that the signature which is opined to be not that of the testator by the expert, in fact is not his signature but only a mark put by him within the meaning of Section 63(a), Succession Act. Therefore it has no need to form an opinion on the question as to identity of the signature of the testator. This being the position in law, the opinion of the expert as to the identity of the signature of the testator in a will is not a relevant fact. Therefore, the expert's opinion is no way useful to prove the Will.

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9. In the above judgment, this Court held that the propounder of the Will owe the duty to establish the genuineness of the Will in question as provided under Section 63 of the Indian Succession Act and Sections

68 to 71 of the Indian Evidence Act. It is found that the opinion of the expert as such may not tilt the scales in arriving at that conclusion as to the authenticity of the Will in question. The experts opinion of the Will may not loom large in determining the issues involved between the parties as regards the proof of the Will in question. Therefore, the expert opinion for the disputed signature in the Will dated 10.09.2000 is not required and it is useful to prove the same as per the law under Succession Act as well Indian Evidence Act. Therefore, the judgment relied upon by the learned counsel appearing for the respondents is not helpful to the case on hand. Therefore, the order passed by the trial Court is perverse and liable to be set aside.

10. In view of the above discussion, the order dated 20.01.2017 passed by the learned First Additional District Munsif, Erode, in I.A.No.939 of 2016 in I.A.No.163 of 2016 in O.S.No.412 of 2013, is hereby set aside. It is also made clear that the application in I.A.No.163 of 2016 filed for seeking hand writing experts opinion is also liable to be rejected. The Court below is directed to reject the same and also directed to proceed with the trial. Further, the trial Court is directed to dispose the

suit within a period of six months from the dated of receipt of a copy of this Order.

11. Accordingly, this Civil Revision Petition stands allowed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.02.2021

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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To

1. The First Additional District Munsif,
Erode.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

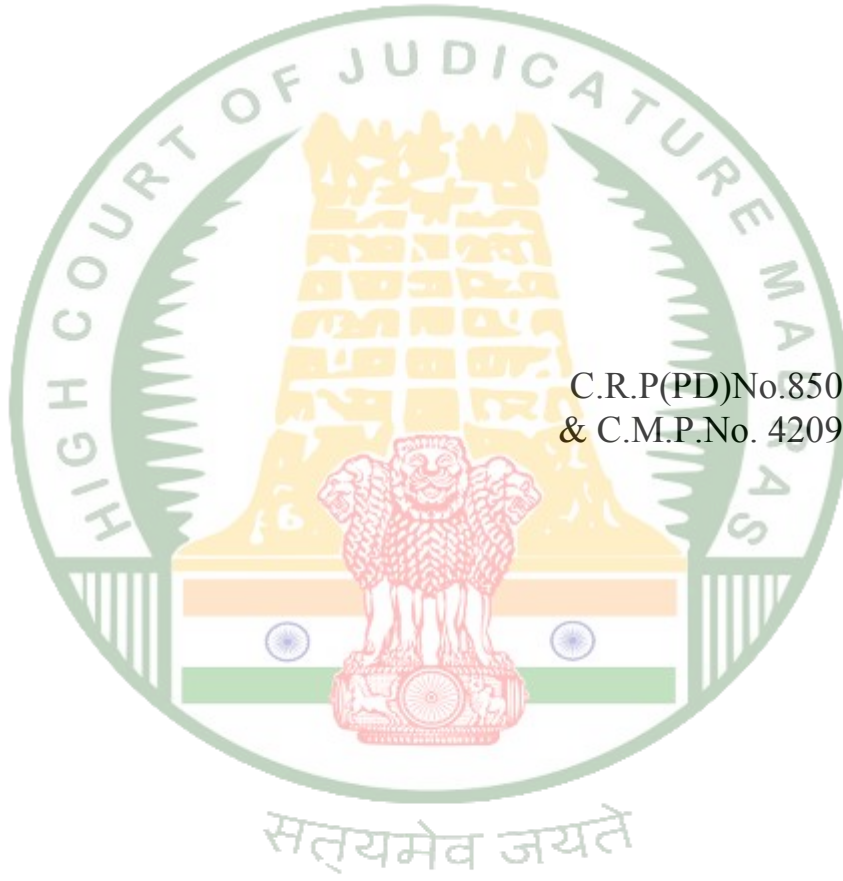


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