

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD)No.3686 of 2018
and C.M.P.No.20530 of 2018

1. P.Priyadharshini
 2. Minor Kavim
Minor rep. by his mother/
Next friend Chitra
 3. Chitra
- ... Petitioners

Vs.

K.Periyasamy Gounder (died)

1. Ammaniammal
2. P.Kumarasamy
3. P.Nanjundeswaran
4. Jayasudha
5. Salem Iyyanthirumaligai
Nesa Karangal Educational
and Charitable Seva Trust
by its President,
Judge Road,
Salem – 8.

6. Salem Shevapet Nesa Karangal
Kumaran Educational and
Charitable Seva Trust by
by its President,
Kannara Street,
Shevapet, Salem – 2.

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 17.09.2018 passed in I.A.No.412 of 2018 in I.A.No.82 of 2016 in O.S.No.621 of 2010 on the file of the learned Principal Subordinate Judge, Salem.

For Petitioner : Mr.Sriram
For Mr.L.Mouli

For Respondents
R1 : Died
For R2 to R4 : Mr.S.Senthil
For R5 & R6 : No appearance

ORDER

This Civil Revision Petition has been filed as against the fair and decretal order dated 17.09.2018 passed by the learned Principal Subordinate Judge, Salem, in I.A.No.412 of 2018 in I.A.No.82 of 2016 in O.S.No.621 of 2010, thereby dismissing the petition seeking hand writing expert's opinion.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit in O.S.No.621 of 2010 for partition claiming 1/4th share in the suit property. The suit was decreed and the petitioners were allotted 3/16 share in the suit property. On the strength of the preliminary decree, the petitioners filed final decree application in

I.A.No.82 of 2016. While pending the final decree petition, the petitioner filed another petition in I.A.No.412 of 2018 to compare signature found in the Will along with the admitted signature of the deceased respondent, with the help of the hand writing experts. The trial Court dismissed the said petition, as against which the present Civil Revision Petition.

3. The case of the petitioners is that the deceased respondent is the grandfather of the petitioners 1 & 2 and the father-in-law of the third petitioner. During pendency of the final decree proceedings, he died intestate. While enquiry, the respondents 3 & 4 produced Will dated 22.02.2013 alleged to have executed by the deceased respondent herein. According to the petitioners, it was forged and created one. Therefore, they prayed to compare the signature of the deceased respondent found in the Will with the admitted signature by the hand writing experts.

4. Whereas, the Court below dismissed the petition for the reason that the alleged Will has already been proved by examining the attesor as contemplated under Section 68 of Indian Evidence Act. It is not mandatory

on the part of the petitioners to prove that the said Will is a forged one. That apart under Section 47 of the Indian Evidence Act, the evidence given by the attester to the document itself is sufficient to form an opinion as to the signature of the testator whether it is genuine or not. Therefore, the petition to send the documents for hand writing experts opinion is not necessary. The Court below rightly dismissed the petition and this Court finds no illegality or infirmity in the order passed by the Court below.

5. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.07.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

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To

1. The Principal Subordinate Judge,
Salem.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

rts



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