



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	06.10.2021
DELIVERED ON	15.11.2021

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) Nos.707 & 708 of 2020

and

C.M.P. (MD) No.4724 of 2020

G.Gengammal

...Petitioner/Petitioner/Plaintiff
in both C.R.P.s

Vs.

Kasi Krishnammal (Died)

- 1.Pothiraj
- 2.Subbulakshmi
- 3.Kondusamy
- 4.S.Kasiram
- 5.Baskaran
- 6.Nagajothi
- 7.S.V.Sivaraja
- 8.M.Jeyalakshmi
9. Ramamurthi
- 10.J.Muthuselvi
- 11.Jeyalakshmi
- 12.Dr.S.Subajeyanthi
- 13.Mahalakshmi
- 14.Venkatesan
- 15.Seetharaman
- 16.Chitra

...Respondents/Respondents/Defendants
in both C.R.P.s

COMMON PRAYER: These Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.Nos.2 & 3 of 2019 in O.S.No.186 of 2018, dated 30.01.2020 on the file of the Sub Court, Aruppukottai.

In Both C.R.Ps.

For Petitioner

: Mr.M.Ashokkumar

For R-1, R-6 & R-13

: Mr.T.Balaji



COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decreetal order, dated 30.01.2020 in I.A.Nos.2 & 3 of 2019 in O.S.No.186 of 2018, passed by the learned Subordinate Judge, Aruppukottai.

2.The revision petitioner/plaintiff has filed a suit in O.S.No.186 of 2018 on the file of the Subordinate Court, Aruppukkottai, for passing a preliminary decree for partition and separate possession of the plaintiff's half share in the suit properties. During the pendency of the aforesaid suit, the revision petitioner/plaintiff has filed a petition in I.A.Nos.2 & 3 of 2019 in O.S.No.186 of 2018 to re-open the case and to send the documents for handwriting expert opinion. The Court below has dismissed both the applications. Aggrieved over the same, the revision petitioner/plaintiff is before this Court.

3.Heard on either side. Perused the material documents available on record.

4.These Civil Revision Petitions have been filed on the ground that the learned trial Judge ought to have considered the fact that the contemporaneous documents can be given only if it is available and hence the Court cannot insist upon to produce the document for comparison. The learned Trial Judge ought to have allowed the applications by fixing time limit for further evidence and for getting report of the Handwriting expert. The learned Trial Judge considering the nature of the suit ought to have allowed the applications as the Expert opinion will render a great help to the Court to determine the suit.

5. The revision petitioner/plaintiff has filed a suit for partition. The 2nd defendant has contended that some properties belonged to him through a Will executed by his father on 24.03.1997 and he has also purchased some properties on his own. The Will was marked as Ex.B.28.

6.The 2nd defendant has filed his counter and stated that the Will dated 24.03.1997 was executed by the Azhagarsamy Naicker. There was no reply statement filed to object the Will.

7.As per the case of the revision petitioner/plaintiff is that there was a family arrangement on 05.07.1997, D1 & D-3 surrendered their rights in the joint family properties. The plaintiff has to prove his case on his own evidence.



8.The revision petitioner/plaintiff has filed two applications in I.A.Nos.2 & 3 of 2019 to reopen and to send the Will to expert for comparing the signature in the Will with the admitted signatures which was contained in 1980 documents.

9.The Judgment reported in **CDJ 2008 MHC 3158 : 2008(1) CTC 816 : 2008(2) MLJ 395 in Ammani Ammal Vs. Dhanalakshmi Bank Ltd, Tirupur and Others**, wherein the Division Bench of this Court held as follows:

.....

"35.Eventhough Section 73 of Indian Evidence Act permits the court to compare the disputed signature with that of the admitted signature, such signature can be compared only with admitted signatures available which are prior in point of time. The debt recovery appellate tribunal did not compare the signature with the admitted signature which were contemporaneous, therefore, learned senior counsel appeared for the petitioner is right in his submission that there may some difference in the signature of a person by lapse of time and as such, the petitioner was justified in objecting to the comparison of her signature in the disputed documents with that of her present signature. "

10.The document to be compared with the Will is 17 years prior to Will. Further the Court can compare the signature.

11.Further, the Will also can be proved only through attesting witness.

12.If the plaintiff really want to send the document for comparison, he should produce the contemporaneous document at an early stage.

13.Therefore, the learned Subordinate Judge, Aruppukkottai, has rightly dismissed the aforesaid two applications. This Court has no valid reason to interfere with the findings passed by the Court below.

14.Finally, these Civil Revision Petitions are dismissed by confirming the fair and decreetal order, dated 30.01.2020 in I.A.Nos.2 & 3 of 2019 in O.S.No.186 of 2018, passed by the learned Subordinate Judge, Aruppukkottai. The learned Subordinate Judge, Aruppukkottai, is directed to dispose the O.S.No.186 of 2018, within a period of six months, from the date of receipt of a copy of the



order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

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/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Subordinate Judge,
Aruppukkottai.
- 2.The Record Keeper,V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.A. SRINIVASAN, Advocate (SR-34474[F] dated 15/11/2021)

+1 CC to M/s.M. ASHOKKUMAR, Advocate (SR-34543[F] dated 16/11/2021)

C.R.P. (MD) .Nos.707 & 708 of 2020
15.11.2021

MGJ(26.11.2021) 4P 8C