



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1458 of 2021

and

C.M.P(MD)No.8139 of 2021

Ravindran

... Petitioner/Petitioner/
4th Respondent/4th Defendant

Vs.

Kokilathammal

... Respondent/Respondent/
Petitioner/Nil

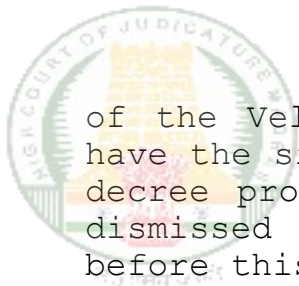
PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair order and executable order dated 29.08.2019 made in I.A.No.01 of 2019 in I.A.No.714 of 2018 in O.S.No.949 of 1989 on the file of the learned District Munsif, Palani.

For Petitioner	: Mr.R.Suriya Narayanan
For Respondent	: Mr.D.Venkatesh

ORDER

The fourth defendant, aggrieved by the dismissal of his application to send the unregistered Will, dated 30.08.2006 for comparison by the Handwriting Expert, is the revision petitioner.

2.A suit in O.S.No.949 of 1989 was filed by one Velusamy Gounder against the defendants therein for a partition. The suit was decreed and thereafter the said Velusamy Gounder had filed I.A.No.308 of 2007 for passing of the final decree. Pending the final decree proceedings, Velusamy Gounder had died and his wife Vengulakshmi had also passed away. Therefore, the respondent herein had filed I.A.No.714 2018 to implead herself as legal representative of the deceased Velusamy Gounder both in the suit as well as in the final decree proceedings. She had claimed that the Velusamy Gounder and his wife Vengulakshmi had no issues and she was the younger sister of the Velusamy Gounder, who had bequeathed the property on her, under a Will dated 30.08.2006. The respondent was also brought on record as the second petitioner. Thereafter, the petitioner herein had taken out an application to have the signature



of the Velusamy Gounder sent for an expert opinion and sought to have the signature compared with the admitted signature in the final decree proceedings in I.A.No.308 of 2007. The said petition was dismissed and challenging the same, the revision petitioner is before this Court.

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3.The learned counsel appearing on behalf of the petitioner would submit that the Will is bequeathed in a suspicious circumstances. When the Will was executed by Velusamy Gounder his wife Vengulakshmi was alive, her exclusion has not been explained in the Will. Further, besides the second respondent, the said Velusamy Gounder had other siblings and the omission to bequeath the property on them, had also not been explained. Therefore, it is for this reason that the petitioner had sought to have the signature compared.

4.The learned counsel appearing on behalf of the respondent would submit that the respondent has examined the attesting witnesses and has, therefore, complied with the provision of Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act and there was no necessity to have the signature compared. That apart, the comparison with the signature of the deceased Velusamy Gounder in the affidavit may not be correct as the signature in the affidavit could have been a manipulated one.

5.Heard the learned counsel on either side and perused the records.

6.The apprehension of the learned counsel appearing for the petitioner that the Will is bequeathed in suspicious circumstances on a *prima facie* examination appears to be reasonable, since the Will does not give any reason for the exclusion of the wife, particularly, when Velusamy Gounder and his wife Vengulakshmi did not have any issues and therefore, it would be all the more necessary for Velusamy Gounder to have provided for his wife. Further, there is no reference to the other siblings of Velusamy Gounder in the Will. By sending the signature for expert opinion it would be beneficial for the respondent as well.

7.Therefore, this Civil Revision Petition is allowed and order passed in I.A.No.1 of 2019 is set aside. The signature in the Will dated 30.08.2006 shall be sent for the expert opinion and the signature shall be compared with the signature of Velusamy Gounder found in I.A.No.308 of 2007 and any other documents acceptable and contemporaneous to the signature in the disputed could be produced by either the petitioner or the respondent. The learned Judge shall take necessary steps for appointing an Advocate Commissioner to take the original documents for the expert opinion. The said exercise shall be completed within a period of one month and the final decree proceedings in I.A.No.308 of 2007 shall be completed within a period



of two months from the date of receipt of expert opinion. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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// True Copy //

/ /2022

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:-

The District Munsif,
Palani.

C.R.P(MD)No.1458 of 2021
and
C.M.P(MD)No.8139 of 2021
22.12.2021

MMS (CO)

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