



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.07.2021

Delivered on : 11.08.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P.(MD)No.2009 of 2017

and

C.M.P.(MD)No.10080 of 2017

WEB COPY

K.Subbramaniyan

... Petitioner/Petitioner/Plaintiff

Vs.

1.K.Dhievesenathipathy

2.K.Angammal

3.D.Nishanth

... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order in I.A.No.105 of 2017, in O.S.No.20 of 2015, dated 20.10.2017, on the file of the Principal District Judge, Karur.

For Petitioner

: Mr.M.Kartik

for Mr.B.Saravanan

For R1

: Mr.R.Vijayakumar

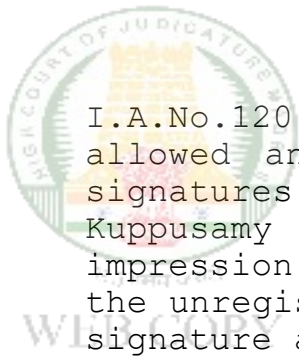
ORDER

This Civil Revision Petition is filed against the order in I.A.No.105 of 2017, in O.S.No.20 of 2015, dated 20.10.2017, on the file of the Principal District Judge, Karur.

2.The revision petitioner herein is the plaintiff and the respondents herein are the defendants in O.S.No.20 of 2015. The petitioners herein filed a petition in I.A.No.105 of 2017, to send the unregistered Will, dated 21.08.2006, for comparison by the Expert with the admitted signatures and thumb impressions of one Kuppusamy Gounder in the registered Will, dated 11.03.1993 and in the registered sale deed, dated 29.11.2004.

3.Brief substance of the petition in I.A.No.105 of 2017 is as follows:-

The Original Suit was filed for partition, declaration and for other reliefs. The first respondent had contended that V.P.Kuppusamy Gounder cancelled his earlier registered Will, dated 11.03.1993 and he was executed an unregistered Will, dated 21.08.2006. The unregistered Will is a forged document, fabricated by the first respondent. The unregistered Will was not produced before the Court. Hence, the petitioners filed a petition in



I.A.No.120 of 2016, for production of the Will. That petition was allowed and then, the first respondent produced the Will. The signatures found in the unregistered Will is not the signature of Kuppusamy Gounder and the thumb impression is not the thumb impression of Kuppusamy Gounder. To disprove the unregistered Will, the unregistered Will has to be sent to the Expert for comparing the signature and thumb impression with the admitted signature and thumb impression of Kuppusamy Gounder found in the registered Will, dated 11.03.1993 and in the registered sale deed, dated 21.09.2004.

4.Brief substance of the counter in I.A.No.105 of 2017 is as follows:-

Kuppusamy Gounder cancelled his earlier Will, dated 11.03.1993 and he executed an unregistered Will, dated 21.08.2006. There was a possibility of a Will getting tampered and hence, the respondent did not produce the unregistered Will along with the written statement. Though the petitioner is claiming for comparison of the unregistered Will with the sale deed, the petitioner has not taken any steps for the production of the original sale deed, dated 29.11.2004. Unless the original sale deed was produced for comparison, this petition is not maintainable.

5.After hearing both sides, the trial Court directed the documents to be sent for comparison. Though the I.A petition was filed for a prayer of comparison of signature and thumb impression, the trial Court has allowed the petition only for comparison of thumb impression alone. Against that order, the petitioner has filed this Revision.

6.On the side of the revision petitioner, it is stated that the trial Court failed to pass an order to compare the thumb impression and the order is only for the signature to be compared. Comparison of both the thumb impression and the signature found on the Will are necessary to disprove the Will. The claim of the revision petitioner for comparison of signature was neither denied nor permitted by the trial Court and prayed for suitable orders.

7.Heard both sides and records perused.

8.A perusal of the trial Court order reveals that the petition was allowed by the trial Court. The trial Court failed to mention that the signature also has to be compared. Hence, the following modification is made:-

"The Finger Print Expert has to compare the signature and thumb impression found in the unregistered Will, dated 21.08.2006 with the admitted signature and thumb impression in the registered Will, dated 11.03.1993 along with the signature and thumb impression in the registered sale deed, dated 29.11.2004 and the thumb impression in the thumb



impression register, dated 29.11.2004."

9. With the above modification, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Principal District Judge,
Karur.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-25850[F] dated 11/08/2021)

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-25970[F] dated 11/08/2021)

Pre-delivery Order made in
C.R.P(MD)No.2009 of 2017
11.08.2021

_RS (26.08.2021) 3P 6C