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CRP.No.1199 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM:

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

CRP.No.1199 of 2017 and
CMP.No.5704 of 2017

N.Ravichandran

... Petitioner

Vs.

1.Manonmani

2.Methra

3.Nethra

4.Amrutha

5.Jayabalchandiran

6.Kumaresan

Rep. by power agent

Jayapalchandiran

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order made in IA.No.896 of 2014 in OS.No.9 of 2012 dated 18.11.2016 passed by the learned District Munsif, Rasipuram.

For Petitioner : Mr.G.Pugazhenth

For Respondents

For R1 & 2 : Mr.K.Premkumar

For R5 & 6 : Mr.D.Selvaraju

For R3 & 4 : No appearance



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ORDER

This civil revision petition has been filed to set aside the fair and decretal order made in IA.No.896 of 2014 in OS.No.9 of 2012 dated 18.11.2016 passed by the learned District Munsif, Rasipuram, thereby dismissed the petition filed under Section 45 of Indian Evidence Act to send for the Will dated 16.02.1986 for comparison of thumb impression.

2. Heard, the learned counsel for the petitioner, the learned counsel for respondents 1 & 2 and the learned counsel for respondents 5 & 6.

3. The petitioner is the plaintiff and the respondents are the defendants in the suit filed for partition in respect of the suit schedule property. The respondents 1 to 4 filed separate written statement and the respondents 5 & 6 filed separate written statement. The respondents 5 & 6 also filed counter claim along with their written statement based on the Will dated 16.02.1986 for declaration in respect of the suit property.

4. The case of the petitioner is that the property belonged to his father and after his demise, all the family members are jointly enjoying the suit



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property. In the suit property, the petitioner has half share and filed suit for partition. The respondents 1 to 4 filed written statement stating that the suit property along with other properties were owned by one, Natesa Gounder. After his demise, the first respondent's husband, the plaintiff, his mother and another brother had already partitioned all the property by the registered partition deed dated 03.01.2002. Except the properties which were subjected for partition, they never owned other properties. While the said Natesa Gounder was alive, he had executed registered Will in respect of the suit property in favour of the respondents 5 & 6 herein. Therefore, the said property was not subjected for any partition at the time of partition happened between the family members on 03.01.2002. After the demise of the husband of the first respondent herein i.e. the elder brother of the petitioner, the petitioner filed the present suit for partition in respect of the suit property which was already bequeathed in favour of respondents 5 & 6 herein.

5. On perusal of the written statement filed by respondents 5 & 6 herein, revealed that the father of the petitioner already bequeathed the suit property by way of registered Will dated 16.02.1986 in their favour and the possession of the property was already handed over to them. They are in



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possession and enjoyment of the property. When respondents 5 & 6

approached the revenue officials for mutation of revenue records, the petitioner filed this suit for partition in respect of the property which was already bequeathed in favour of respondents 5 & 6 herein. They also filed counter claim along with the written statement for declaration and permanent injunction in respect of the suit schedule property along with their written statement. They filed original Will dated 16.02.1986. While pending the suit, the petitioner filed petition under Section 45 of Indian Evidence Act to send for the Will dated 16.02.1986 for comparison of thumb impression with the admitted document. In the meanwhile, the petitioner applied for inspection of the Will dated 16.02.1986. It was allowed and the petitioner was permitted to inspect the Will. In front of counsel for respective parties, the petitioner inspected the Will. Thereafter, he filed this petition under Section 45 of the Indian Evidence Act.

6. The respondents vehemently contended that at the time of inspection of the Will, the petitioner manipulated the same by putting thumb impression of the deceased Natesa Gounder in the Will. Therefore, the petitioner had sought for comparison of thumb impression only and not with



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regards to signature found in the Will. Though the petitioner filed affidavit in support of the petition in which he sought for expert opinion on comparison of signature and the thumb impression, he restricted his prayer in the petition only in respect of thumb impression. Further, admittedly no evidence is adduced by both the parties so far in the suit. When the respondents 5 & 6 herein filed counter claim on the basis of the Will dated 16.02.1986, it is their burden to prove the same. It is not necessary for the petitioner to disprove the claim of the respondents 5 & 6 herein. That apart, even before marking the said Will, the petitioner cannot ask for comparison of thumb impression in the Will dated 16.02.1986. At the time of applying for mutation of revenue records, the respondents 5 & 6 submitted certified copy of the Will dated 16.02.1986 before the Tahsildar concerned. The petitioner obtained the copy of the Will and filed the same with this petition in IA.No.896 of 2014. Admittedly, it does not contain thumb impression of the said Natesa Gounder in the Will dated 16.02.1986. Therefore, the trial court rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the court below.

7. Accordingly, this civil revision petition is dismissed. However, it is open to the petitioner to file appropriate petition after marking documents.



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The suit is of the year 2012. As such, the trial court is directed to dispose of the suit in OS.No.9 of 2012 within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.12.2022

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To
The learned District Munsif,
Rasipuram.

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