



CRP.(PD).No. 3807 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No. 3807 of 2019

and

CMP.No. 25001 of 2019

1. Chinnasamy
2. Othisamy
3.Sampath
4.Renugadevi
5.Radhadevi

.. Petitioners

Versus

Ramalingam

...Respondent

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 01.02.2019 passed in I.A.No. 63 of 2018 in O.S.No. 198 of 2017 on the file of the IV Additional District and Sessions Judge, Coimbatore.

For Petitioners : Mr.R. Nalliyappan
for Mr.I.C.Vasudevan

For Respondent : Mr.G. Karthikeyan



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 01.02.2019 passed in I.A.No. 63 of 2018 in O.S.No.198 of 2017 on the file of the IV Additional District and Sessions Judge, Coimbatore.

2.The learned counsel appearing for the revision petitioners/defendants submitted that the trial Court has failed to take note of the fact that the Will dated 09.02.2017, which was relied on by the respondent/plaintiff, was said to have been executed by the said Sivakami. The said Will is a registered Will. The learned counsel for the revision petitioners sought permission of the Court to get an opinion of handwriting expert with respect to the signature found in the alleged Will and also another Will dated 09.02.2017 said to have been executed by one Sivagamy, by comparing the signature found in Will dated 09.01.2017 and in Registration Certificate pertaining to Vehicle bearing Regn.No.TN-66-D-1788 and also prayed to appoint an Advocate Commissioner to take the original documents to the Forensic Department for obtaining the Forensic report. He further submitted that both the registered Wills were of the



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year 2017. But the trial Court has failed to take note of the same and erroneously dismissed I.A.No.63 of 2018 which was filed seeking permission of the Court to get the opinion of handwriting experts with respect to the signature found in the Will dated 09.02.2017 and for other reliefs. Therefore, he prays to set aside the order passed by the trial Court.

3.By way of reply, the learned counsel appearing for the respondent/plaintiff submitted that, as per the contention of the defendants, they have procured the signed documents for comparison along with R.C.Book which contains the said Sivagamyammal's signature, but the same was not produced for comparison. The trial Court passed the impugned order for non-production of R.C.Book.

4.At the time of arguments, the learned counsel for the revision petitioner submits that they are ready to produce the R.C.Book for comparing the signature in both the Wills said to have been executed by the said Sivagamy.



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5. Heard both sides and perused the materials available on record.

6. On a perusal of the records, it is seen that the respondent/plaintiff filed the suit in O.S.No.198 of 2017 before the IV Additional District Court, Coimbatore, for the relief of partition and declaration. During the pendency of the suit proceedings, the revision petitioners/defendants filed I.A.No. 63 of 2018 under Section 45 of the Indian Evidence Act. After perusing the records, the Court below dismissed the said application by the impugned order dated 01.02.2019. Challenging the same, the present civil revision is filed.

7. On a further perusal of the records, it reveals that, admittedly, the plaintiff relies on registered Will dated 09.01.2017. The defendants relied on another Will dated 09.02.2017. Both the Wills are of contemporaneous period and to find out the genuinity and signature of the testator Sivagamy, on the earlier Will dated 09.01.2017 which is alleged to be registered Will as per the Registration Department, I.A.No.63 of 2018 was filed. The testator who executed Will said to have signed in the RC



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Book also and signed in the Book of Registration Department in the maintained concerned Registrar Office,

8.Hence, for obtaining the authenticity of both Wills, this Court modifies the impugned order passed by the trial Court Judge and directs the trial Court to appoint an Advocate Commissioner to take both the Original Wills dated 09.01.2017 and 09.02.2017 along with Original RC Book which contains signature of the testator Sivagamy for comparison through Court Commissioner, in accordance with law. After obtaining the Tamil Nadu Forensic Science and Laboratory [TNFSL] report, the trial Court is directed to dispose of the suit itself in O.S.No.198 of 2017 on its file within a period of 8 months from the date of receipt of a copy of this order, as requested by the defendants.

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

14.11.2022

msm



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1. The IV Additional District and Sessions Judge,
Coimbatore.
2. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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