



CRP.No.2368 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM:

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

CRP.No.2368 of 2016 and
CMP.No.12226 of 2016

1.K.Shanmugam
2.T.Tamilselvi
3.Siviskumar
4.Sivaprakash

... Petitioners

Vs.

1.Thangamani
2.Thirunavukkarasu

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decretal of the Subordinate Judge's Court at Pollachi dated 24.06.2015 in IA.No.575 of 2014 in OS.No.79 of 2013.

For Petitioners : Mr.P.Valliappan

For Respondents

For R1 : Mr.R.Nandhakumar

For R2 : No appearance

ORDER

This petition has been filed to set aside the fair and decretal of the Subordinate Judge's Court at Pollachi dated 24.06.2015 in IA.No.575 of 2014



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in OS.No.79 of 2013, thereby dismissed the petition filed under Section 45 of Indian Evidence Act to send for Will for handwriting expert opinion.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit for partition in respect of the suit property. After receipt of the suit summons, the respondents filed written statement. Thereafter, the petitioners filed application under Section 45 of Indian Evidence Act to send the Will dated 27.06.1998 for getting handwriting expert opinion on the ground that the petitioners are brothers of one, Ramalingam who executed the alleged Will dated 27.06.1998 in favour of the first respondent herein. It is forged one and the same was not executed by the brother at any point of time since he was an alcoholic and he was in continuous seduction. Therefore, he could not have executed any Will in favour of the first respondent herein. He was also severely affected by jaundice and he was under continuous treatment. Therefore, execution of Will itself is totally imaginary and therefore, they are asking for expert opinion. The respondents filed counter stating that already the petitioner's mother one, Kaliammal i.e. the mother in law of the first respondent filed suit for partition in OS.No.463 of 1999 in respect of the very same suit property and the same was dismissed. After her demise, the petitioners filed the present suit for partition for the very same property.



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In fact, the first respondent already filed suit in OS.No.521 of 2004 for declaration and injunction in respect of very same property on the file of District Munsif Court, Pollachi. While pending the said suit, the mother of the petitioners herein i.e. Kaliasammal who happened to be the mother in law of the first respondent filed petition under Section 45 of Indian Evidence Act seeking to send for the Will for handwriting expert opinion in IA.No.1894 of 2010 and the same was dismissed by order dated 18.09.2011 and aggrieved by the same, the said Kaliasammal preferred civil revision petition before this Court in CRP.PD.No.3132 of 2011 and this Court by order dated 14.09.2011 dismissed the civil revision petition. After demise of the said Kaliasammal, the petitioners herein being the legal heirs filed the suit for partition for the very same property. While pending the suit, they again filed the very same petition under Section 45 of Indian Evidence Act to send for the said Will for handwriting expert opinion. While pending the suit in OS.No.521 of 2004, the said Kaliasammal executed deed of acceptance dated 05.03.1999, thereby categorically admitted the execution of the Will in favour of the first respondent herein by the said Ramalingam dated 27.06.1998. She further declared that in respect of the said said suit property, she has no right over the property. Therefore, the court below rightly dismissed the petition and this Court finds



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no infirmity or illegality in the order passed by the court below.

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4. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

02.01.2023

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 Subordinate Judge's Court
at Pollachi



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