



C.R.P.Nos.2764 & 2765 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.Nos.2764 & 2765 of 2016
C.M.P.Nos.14164 & 14165 of 2016

K.R.Selvam

... Petitioner in
both C.R.Ps.

Vs.

1. Pappa @ Radha
2. G.Govindammal
3. K.R.Rameshkumar
4. K.Ramasamy
5. K.Venkatachalam

... Respondents in
both C.R.Ps.

Common Prayer :- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order dated 08.06.2016 in I.A.Nos.142 & 143 of 2015 in O.S.No.56 of 2011 on the file of the II Additional District Munsif Court, Salem.

For Petitioner	: Ms.P.Veena Suresh
For Respondents	
For R1 & R2	: Ms.N.Nathani
	For Mr.T.S.Baskaran
For R5	: Mr.Durga Vijayakumar
For R3 & R4	: No appearance



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COMMON ORDER

These Civil Revision Petitions have been filed as against the order dated 08.06.2016 passed by the learned II Additional District Munsif, Salem, in I.A.Nos.142 & 143 of 2015 in O.S.No.56 of 2011, thereby allowing the petitions seeking appointment of the Advocate Commissioner and to get hand writing experts opinion.

2. The petitioner is the first defendant and the respondents 1 & 2 are the plaintiffs. The respondents 1 & 2 filed suit in O.S.No.56 of 2011 for partition and declaration to declare the Wills dated 23.11.2003 and 05.10.2009 are fabricated, false and forged one and also to declare that the release deed dated 17.09.2003 is null and void, with consequential injunction not to alienate the suit properties. While pending the suit, the respondents 1 & 2 filed applications seeking appointment of Advocate Commissioner for taking the disputed Will dated 23.11.2003 and the admitted document viz., the settlement deed dated 17.09.2003 and also for comparing the disputed signature in the Will dated 23.11.2003 with admitted signature of the deceased found in the Settlement deed dated 17.09.2003 and get hand writing expert's opinion from the Central Forensic



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Science Laboratory, Hyderabad. Both the petitions were allowed and aggrieved by the same the present Civil Revision Petitions.

3. The learned counsel appearing for the petitioner would submit that these applications were filed by the respondents 1 & 2 on the third occasion in order to seek hand writing expert's opinion with regard to the Will. The petitioner has claimed the suit properties through Will. Therefore, the burden of proof is only on the shoulder of the petitioner and the petitioner has to be prove the Will in the manner known to law. The hand writing experts opinion would not held in any way to prove the Will or disprove the same.

3.1. She further submitted that already the respondents 1 & 2 claimed report from the private Forensic Laboratory and thereafter they also filed another application to get hand writing expert's opinion in the Government Forensic Science Laboratory, Chennai. Already they obtained hand writing expert's opinion and without even filing any objection, on third time, these applications seeking appointment of Advocate Commissioner in



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order to obtain hand writing experts opinion from Central Forensic Science Laboratory, Hyderabad. The Court below mechanically allowed the same without considering the fact that already hand writing expert's opinion obtained on the insistance of the respondents 1 & 2, without scraping the earlier opinion, should not have appointed another Advocate Commissioner in order to get third opinion from the hand writing expert.

3.2. In support of her contention, she relied upon the the judgment reported in *AIR 1996 Mad 347* in the case of *Vemba Gounder Vs. Pooncholai Gounder*, in which this Court held that it is well settled proposition that until the Court is dissatisfied with the proceedings and report of the Commissioner earlier appointed, it will not be proper to ignore the same and direct even further enquiry, much less the scrapping of the earlier report as a whole and appoint a fresh Commissioner. The power is circumscribed by the principles under Order 26 Rule 10(3) of C.P.C. The power can be exercised only on the finding that the proceedings and the report of the earlier Commissioner are not satisfactory and there is need for a further enquiry. Further held that the appointment of second Commissioner



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and the reports filed by him, without setting aside first Commissioner's report, is wholly illegal and without jurisdiction.

4. Per contra, learned counsel appearing for the respondents 1 & 2 submitted that though they obtained expert's opinion from the private forensic lab as well as the Government forensic lab, the trial Court could not come to conclusion that which one is correct. Therefore, the respondents 1 & 2 rightly filed another application to get hand writing expert's opinion. Considering the facts and circumstances, the trial Court allowed the petitions and appointed the Advocate Commissioner to get expert's opinion from the Central Forensic Science Laboratory, Hyderabad, on the Will dated 23.11.2003 with the admitted signature found in the settlement deed dated 17.09.2003.

4.1. She further submitted that the trial Court categorically stated the reasons for allowing the petitions to get hand writing expert's opinion. It seems that private expert's opinion is in favour of the respondents 1 & 2 herein. Whereas the Government Forensic Science Laboratory expert's



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opinion is against the respondents 1 & 2. Therefore, the trial Court could not able to find out which one is correct as such rightly allowed the petition to get third hand writing expert's opinion from the other State Forensic Laboratory at Hyderabad.

4.2. In support of her contention, she also relied upon the judgment of the High Court of Punjab and Haryana dated **29.10.2023** in CR.No.3434 of 2013 in the case of ***Chamkaur Singh Vs. Mithu Singh***, which held as follows :-

“..... the Court is not an handwriting expert. The Court does it only through its visual experience. Ordinarily, the Court should not take upon itself the responsibility of comparing signatures when disputed, as in such matters technical expertise is necessary. In view of the above discussion and the fact that the trial Court has to determine a fact and to give weight and see credibility of experts' opinion, the opinion of third government expert which may be an independent opinion may help the Court to break the stalemate and mitigate the conflict between the opinions of private experts giving



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conflicting opinions. Although the opinion of the third expert is not binding upon the Court, yet the trial Court being a Court of fact has to arrive at independent decision and opinions of experts are not binding upon the trial Court as the Court is undoubtedly an expert of experts The conflicting opinions from equal number of experts between two sides is a common scenario in our legal system.....”

Hence, she prayed to dismiss the present petitions.

5. Heard Ms.P.Veena Suresh, learned counsel appearing for the petitioner, Ms.N.Nathani, learned counsel appearing for the respondents 1 & 2 and Mr.Durga Vijayakumar, learned counsel appearing for the fifth respondent.

6. The respondents 1 & 2 are the plaintiffs and they filed suit for partition and declaration. Insofar as the declaration is concerned, they prayed to declare that the Will executed in favour of the petitioner and other respondents are null and void. While pending the suit, the respondents 1 & 2 herein sought for hand writing expert's opinion from the private concerned



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Accordingly, opinion obtained from the private hand writing experts and the same was in favour of the respondents 1 & 2. Again at the insistence of the respondents 1 & 2, another Advocate Commissioner was appointed in order to get hand writing expert's opinion from the Government Forensic Laboratory. After appointment of Advocate Commissioner, the expert's opinion obtained from the Government Forensic Laboratory, Chennai and the same was in favour of the petitioner. Therefore, the respondents 1 & 2 herein again filed these applications to get hand writing expert's opinion from the Central Government Forensic Laboratory at Hyderabad.

7. It is seen that the disputed document in the present suit is Will. Both the judgments cited by the learned counsel appearing for the petitioner as well as the respondents are pertaining to the appointment of Advocate Commissioner. It is true that without scraping the earlier Advocate Commissioner's report, the second Advocate Commissioner cannot be appointed for getting another opinion. In the case on hand, the disputed document is Will. The petitioner and the third respondent are claiming the suit properties through Will dated 23.11.2003 which was executed in their



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favour. The respondents 1 & 2 also challenged the Will dated 05.10.2009, which was executed in favour of the fourth defendant viz., fifth respondent herein. Therefore, the person who claimed the properties through Will has to prove the same. The burden of proof on the shoulder of the petitioner and respondents 3 & 4 to prove the Wills dated 23.11.2003 & 05.10.2009, in the manner known to law, as contemplated under Sections 68 to 71 of the Indian Evidence Act.

8. In this regard it is relevant to rely upon another judgment of this Court reported in **CDJ 2021 MHC 3974** in the case of **Jothimani & ors Vs. M.Samiyappan & ors.**, which held that the Will is required to be proved under Section 63 of the Indian Succession Act and Sections 68 to 71 of the Indian Evidence Act. A propounder can possibly contend that the signature which is opined to be not that of the testator by the expert, in fact is not his signature but only a mark put by him within the meaning of Section 63(a) of the Indian Succession Act. Therefore, it has no need to form an opinion on the question as to identity of the signature of the testator. This being the position in law, the opinion of the expert as to the identity of the signature of



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the testator in a Will is not a relevant fact. Hence, the expert's opinion is no way useful to prove the Will.

9. Further, the Will in question has to be proved by the propounder of the Will. The burden of proof is upon the propounder of the Will viz., the petitioner & respondents 3 & 4 and not for the respondents 1 & 2 to prove the same. The petitioner & respondents 3 & 4 are being the propounder of the Will owe the duty to prove the genuineness of the Will in question as per the requirements under Section 63 of the Indian Succession Act and Sections 68 to 71 of the Indian Evidence Act. The expert's opinion may not tilt the scales in arriving at that conclusion as to the authenticity of the Will in question. It could only be firmly adjudicated based upon the evidence to be adduced by the parties as per the requirements of law. The opinion of experts is not admissible in regard to matters upon which the Court can form a judgment from other evidence and circumstances. Therefore, though the hand writing expert's opinion obtained, it would not help the Court to prove the Will. The Will has to be proved in the manner known to law and it cannot be proved by any opinion.



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10. In view of the above discussions, this Court feels that the order passed by the trial Court cannot be sustained and it is liable to be dismissed. Accordingly, the order dated 08.06.2016 passed by the learned II Additional District Munsif, Salem, in I.A.Nos.142 & 143 of 2015 in O.S.No.56 of 2011, is hereby set aside. The trial Court viz., the learned II Additional District Munsif, Salem, is directed to dispose the suit within a period of six months from the date of receipt of a copy of this order.

11. Accordingly, both the Civil Revision Petitions stand allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

rts

To

1. The II Additional District Munsif,
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