



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :18.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.No.3873 of 2023
and
CMP.No.23896 of 2023

S.K.S.Subramaniam (deceased)

1. M/s Tiruppur Maligai Merchant's Association,
Represented by its President,
2. M/s Tiruppur Maligai Marchent's Association,
Represented by its present Treasurer,
Venkidupathi
both at ABT Road, Karuvampalayam,
Tiruppur.

... Petitioners

Versus

1. S.K.S.Sivakumar
2. N.Vijayakumar
3. G.Rangaswami
4. R.Karuppuswami
5. R.Kaliammal
6. K.P.Senthilkumar
7. K.Karuppusamy
8. G.Meenakshi
9. Minor G.Arthi @ Kannammal
Represented by Guardian & mother G.Meenakshi

... Respondents



Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 11.09.2023 made in I.A.No.593 of 2019 in O.S.No.577 of 2005 on the file of the Principal District Munsif, Tiruppur.

For Petitioners : Mr.R.Bharath Kumar

For R1 : Mr.J.Antony Jesus

ORDER

The petitioner has filed this revision to set aside the fair and decreetal order dated 11.09.2023 made in I.A.No.593 of 2019 in O.S.No.577 of 2005 on the file of the Principal District Munsif, Tiruppur.

2. Challenging the order passed in I.A.No.593 of 2019, defendants 2, 11 and 12 who are the purchasers of the property from the original vendor Maruthammal, who is the mother of the plaintiff. Before the trial Court, the revision petitioners filed an application praying the Court to send the Xerox copy of the Will marked as Ex.B5 to obtain expert opinion to find out the signature in the Will executed by S.K.Soundappa Chettiar by comparing the



same with Ex.B6 and B7 and to get expert opinion under Section 45 of Indian Evidence Act. The reason assigned by them was that originally the Will was under the custody of the plaintiff. Based on the Will, the vendor Marudammal gave the Power of Attorney to the 1st petitioner, from whom the 2nd and 3rd petitioners herein namely, D11 and D12 have purchased the property in the year 1992. The plaintiff filed the suit in the year 1992 for partition, claiming share in the property including the property which was said to be purchased by the defendants 11 on 12.09.2002.

3. After issuance of the notice, the defendants filed written statement denying the plaintiffs' claim in the property and stated that they purchased the property for valid consideration in the year 1992 itself from one Subramaniam, who is the Power Agent of Marudammal. Now, before the trial Court, issues have been framed and the witnesses were examined on the side of the plaintiff. The suit is posted for the evidence on the side of the defendants.



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4. The learned counsel for the revision petitioner filed an application to get expert opinion to compare the signature found in Ex.B5, namely the Signature of S.K.Soundappa Chettiar and also to compare the signature found in the contemporary document of the year 1996. Ex.B6 IT Return and Ex.B7 Resolution passed in the year of 1996 stating that the signatures found in those documents Ex.B6 and Ex.B7 are that of S.K.Soundappa Chettiar and to prove Ex.B5, he wants to compare the same by expert opinion. That application was strongly objected by the plaintiff, since the suit was filed in the year 2005.

5. The defendants have not taken any steps after filing written statement to send the document for the expert opinion. After completion of the trial, they have come forward with ulterior motive, because they have not produced the original Will, and only xerox copy of the Will is taken into consideration for expert opinion, and as such, it is not permissible under law.



6. Considering both sides submissions, the learned trial Judge held that, on 11.09.1993, by sending xerox copy of the Will to expert opinion as such is not permissible and even if the signature is found to be true and the same cannot be considered. Accordingly, application was dismissed. Challenging the said finding, the revision petitioner has filed this revision.

7. The learned counsel for the revision petitioner submitted that notice was served and the learned counsel for the respondent also appeared. If the opportunity is not given to prove the Will as per Section 68 of the Indian Evidence Act, his valid right to defend the case before the trial Court will be defeated. He filed application to get expert opinion in respect of the signature of "S.K.Soundappa Chettiar" but the same was not be permitted by the learned trial Judge. Hence, he prayed to set aside the findings of the trial Court.

8. By way of reply, the learned counsel for the respondents submitted that, all these 25 years, the case is pending before the trial Court, and the revision petitioner has not taken any steps to send the signature to obtain



expert opinion. Only after commenced trial, to drag on the proceedings, he filed this revision. The findings given by the learned trial Judge need no interference and the same was rightly observed by the learned trial Judge.

9. Considering the facts and circumstances, and the fact that the suit is filed in the year 2005 by the plaintiff for the relief of partition against 13 defendants, it is seen that the revision petitioners herein are defendants 11 and 12 and they admitted the purchase of the suit property, during the pendency of the suit, from one Marutham who is the mother of the plaintiff herein. The contention of the revision petitioner is Marutham derived the title through Will 16.07.1996 said to be executed by the S.K.Soundappa Chettiar and so they pressed title to the said Will. Admittedly, xerox copy of the Will alone is produced and it is relied on by them and according to them original copy is with the plaintiff. About the custody of the Will, it is stated that they produced statement made in the earlier suit proceedings.

10. The learned counsel for the plaintiff replied that in the earlier suit proceedings between the Marutham and others original Will was said have



been lost, but no complaint was given. But to fill up the lacuna in the suit, now the present application is filed. The revision petitioner is tracing title through the purchaser from Marutham, who is said to be beneficiary under the Will. According to them, the original will is with the plaintiff, but the same is denied by him. Admittedly, they have produced the xerox copy of the Will, and if at a they have not given chance to prove will, testator their valuable right to defend the case will be defeated. As per Section 68 of Indian Evidence Act the Will has to be proved by the parties concerned. Therefore, the learned trial Judge, without giving such opportunity, erroneously made observation that even if the signature is found to be proved, it cannot be accepted, and such observation made by the Presiding Officer is an unwarranted one.

11. Therefore, the findings rendered by the learned trial Judge are set aside, directing the document is to be sent to expert opinion as it is the duty of the parties who received the Will is to prove the same. Therefore, the findings of the learned trial Judge are set aside. I.A.No.593 of 2019 in O.S.No.577 of 2005 on the file of the Principal District Munsif, Tiruppur, is



hereby allowed. All the documents be sent to the hand writing expert to obtain opinion and report shall be obtained within a period of six weeks from the date of receipt of a copy of this order. Thereafter, the learned trial Judge is directed to proceed with the case as early as possible, and dispose of the suit preferably within a period of three months from the date of obtaining the opinion of the handwriting expert.

12. Accordingly, this Civil Revision petition is allowed. Consequently connected Miscellaneous petition is closed. No costs.

18.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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To

- 1.The Principal District Munsif, Tiruppur.
- 2.The Section Officer,
VR-Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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