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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 19.10.2023

CORAM :

**THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI**

C.R.P.No.3975 of 2023  
and  
CMP.No.24404 of 2023

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S.SenthilKumar

... Petitioner

Vs.

M.Vasu

... Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 08.09.2023 passed in I.A.No.3 of 2023 in O.S.No.38 of 2011 on the file of the District Munsif Court, Sriperumbudur.

For Petitioner : Mr.T.Thiyagarajan

**ORDER**

The petitioner has filed this petition to set aside the fair and decreetal order dated 08.09.2023 passed in I.A.No.3 of 2023 in O.S.No.38 of 2011 on the file of the District Munsif Court, Sriperumbudur.



2. Heard, Mr.T.Thiyagarajan, learned counsel for the petitioner.

Notice served to the Cavetor. But there is no representation from the Cavetor.

3. Before the trial Court the petitioner has filed a suit for declaration and recovery of possession based on the unregistered will dated 10.08.1955, bequeathed the suit property his father had executed a settlement deed. The defendant appeared and submitted the written statement. Now the trial is begun during the plaintiffs evidence. P.W.1 and P.W.2 were examined as an attester of the Will. The plaintiff wants to examine another independent witnesses to prove the signature of the attester. Hence he filed application in I.A.No.3 of 2023 to adduce evidence. The said application was objected by the defendant stating that the person who wants to examine is not a related witnesses and he is no way connected with the alleged Will.

4. Considering both side submissions, the learned trial Judge concluded that both the attesting witnesses to the "Will" died and already PW2 being the son of attesting witness was examined, who deposed nothing



beneficiary to the case of plaintiff. Already a fair opportunity has been given to the petitioner to prove the "will", as well as the proposed witnesses was no way related to the attester witnesses and the suit is pending for a long time, accordingly dismissed the petition.

5. The learned counsel for the respondent submitted that under Section 68 of Evidence Act, Will is to be proved. Since, both the attester witnesses died, necessity arose for him to examine independent witnesses who is well versed with the said attesters.

6. Admittedly, attester of the will is no-more, therefore the plaintiff taken steps to adduce secondary evidence to identify the Signature of the attester and the same is permissible under law provided if the material witnesses of the Will is not available. Therefore, the plaintiff is entitled to examine the individual witnesses, in order to get more particulars with regard to identify the signature of the attester. Hence, the reason assigned by the plaintiff is valid one but without appreciating the same the learned trial Judge erroneously dismissed the application. Therefore, this Court is



**T.V.THAMILSELVI, J.**

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inclined to set aside the finding given by the learned trial Judge in I.A.No.3 of 2023 in O.S.No.38 of 2011 on the file of the District Munsif Court, Sriperumbudur.

7. Accordingly, Civil Revision Petition is allowed. However, the learned District Munsif is directed to give opportunity to the petitioner to adduce evidence as per manner known to law. Consequently, connected miscellaneous petition is closed. No costs.

**19.10.2023**

Index : Yes/No  
Speaking/Non Speaking order  
Neutral Citation: Yes/No  
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To  
1. The District Munsif Court, Sriperumbudur.  
2. The Section Officer,  
VR-Section, High Court of Madras.

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