



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on
11.04.2023

Orders Pronounced on
22.12.2023

CORAM

**THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA
KURUP**

C.R.P.No.1285 of 2020
and C.M.P.No.2062 of 2020

Gomathy

..Petitioner

Vs.

1.Periyathal (Died)
2.Singaravel
3.Krishnaveni
4.Sarojinidevi
5.Ramasamy
6.Velusamy

..Respondents

[R1 died, Respondents 2 to 4 already on record as Lrs of the deceased R1 viz., periyathal as per the memo dated 23.03.2023 and vide Court order dated 23.03.2023 made in C.R.P.No.1285 of 2020 and C.M.P.No.7062 of 2020]

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and final order dated 27.09.2019 in I.A.No.11 of 2019 in O.S.No.70 of 2013 on the file of the III Additional District and Sessions Judge, Tiruppur at Dharapuram.



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For Petitioner : Mr.K.Sudhakar
For Respondents
For R2 to R5 : Mr.N.Manokaran
For R1 : Died
For R6 : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the final order dated 27.09.2019 in I.A.No.11 of 2019 in O.S.No.70 of 2013 on the file of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, thereby dismissing the application filed in I.A.No.11 of 2019 in O.S.No.70 of 2013 dated 27.09.2019.

2. Mr.K.Sudhakar, learned Counsel for the Revision Petition submitted his arguments for the Plaintiff / Revision Petitioner.

3. As per the submission of the learned Counsel for the Revision Petitioner, the Petitioner is the Plaintiff before the Trial Court, learned III



Additional District and Sessions Judge, Tiruppur at Dharapuram. The Plaintiff in the suit in O.S.No.70 of 2013 had filed an application in I.A.No.11 of 2019 in O.S.No.70 of 2013, seeking orders of the Court to send the alleged Will dated 20.11.2000, which is alleged to have been executed by the deceased C.Kumarasamy Gounder, the father of the husband of the Plaintiff in favour of the 1st Defendant in the suit for opinion of the hand writing expert. The said application had been filed under Order XXVI and Rule 10(A) r/w Section 151 of the Code of Civil Procedure.

4. The Defendants as Respondents in I.A.No.11 of 2019 in O.S.No.70 of 2013 had vehemently objected to the same by filing their detailed counter affidavit. After due enquiry, the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, had dismissed the said I.A.No.11 of 2019 in O.S.No.70 of 2013 by order dated 27.09.2019. Aggrieved by the same, the Plaintiff before the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, had approached this Court under Article 227 of the Constitution of India, seeking prayer to set aside the order passed by the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, dismissing the I.A.No.11 of 2019 in O.S.No.70 of 2013 dated 27.09.2019.



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5. It is the further submission of the learned Counsel for the Revision Petitioner that the Plaintiff in the suit in O.S.No.70 of 2013 had filed a suit for Partition of the family properties that means the Defendants, who are the Respondents 2 to 6 herein. The 1st Defendant in the suit had filed the Written Statement stating that the father-in-law of the Plaintiff Thiru.C.Kumarasamy Gounder had executed a Will in favour of the 1st Defendant.

6. The brief facts which are necessary for deciding this petition are as follows;

The Petitioner herein as Plaintiff in O.S.No.70 of 2013, had filed a suit for Partition of the family properties, seeking 6/15 share in the suit properties. The 1st Defendant in the suit is the mother-in-law of the Plaintiff. The father-in-law of the Plaintiff Thiru.C.Kumarasamy Gounder, died leaving behind his wife namely the 1st Defendant, his sons and daughters, who are the Defendants 2 to 6. The Plaintiff is the daughter-in-law of the 1st Defendant and her husband died. Originally the father-in-law of the Plaintiff acquired some of the suit properties through a Partition between himself and one T.Kumarasamy, which they had acquired through purchase. After Partition,



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the revenue records were transferred in the name of the deceased C.Kumarasamy Gounder. The 1st Defendant in the suit is the wife of C.Kumarasamy Gounder and the mother of the husband of the Plaintiff in the suit and the Defendants 2 to 4. The family consisted of the Plaintiff and Defendants 1 to 4 as a Joint Hindu Family. The suit properties are joint family properties of the family. The Plaintiff and the Defendants 1 to 4 have common right over the suit properties. The Plaintiff is entitled to get share of 6/15th in the suit properties. In this situation, the Defendants 1 and 2 had executed a Sale Deed on 03.05.2010 in favour of the 6th Defendant in respect of some of the suit properties and created a false title in order to get unlawful gain, it was objected by the Plaintiff through a legal notice dated 13.10.2013. The 1st Defendant had sent a reply notice to the Plaintiff by stating that in respect of some of the properties belonged to the husband of the 1st Defendant C.Kumarasamy Gounder, had executed an unregistered Will in favour of the 1st Defendant on 20.11.2000.

7. It is the contention of the learned Counsel for the Plaintiff that the Will dated 20.11.2000 is not an original Will, it was created by the Defendants 1 to 5 in the suit, along with document writer and witnesses, who



colluded with them, with an ulterior motive to deny the share of the Plaintiff in the suit properties. The signature found in the alleged Will does not belong to C.Kumarasamy Gounder. Except the documents dated 30.09.1991, 14.09.1992, 11.03.1992 and 09.04.1994 through Document Nos.71 of 1991, 72 of 1991 executed in favour of the Defendants 3 to 5. The said C.Kumarasamy Gounder had not executed any document in favour of any one in his lifetime. The testator of the Will dated 20.11.2000 was not the deceased C.Kumarasamy Gounder. The alleged Will had not come into force and the 1st Defendant in the suit had not bequeathed the said properties under the Will dated 20.11.2000. The said properties are not under the separate possession and enjoyment of the 1st Defendant in the suit. The revenue records also not transferred in the name of the 1st Defendant in the suit, based on the Will. Therefore, in order to prove the stand of the Plaintiff, it is just and necessary to send the impugned Will dated 20.11.2000 to the Forensic Laboratory for forensic analysis regarding the signature and hand writing of late C.Kumarasamy Gounder, to find out the truth about the execution of the alleged Will by the deceased C.Kumarasamy Gounder by comparing his signature available in admitted previous documents.



8. The Defendants as Respondents in I.A.No.11 of 2019 in O.S.No.70 of 2013 filed a detailed counter affidavit stating that the suit properties are self acquired properties of deceased C.Kumarasamy Gounder, and on the date of purchase of the suit properties, the Defendants 3 and 4 were minors and the deceased Gunasekaran and 2nd Defendant were not born. It was hidden by the Plaintiff. In his lifetime, the said C.Kumarasamy Gounder, sold some of his own properties for his urgent needs and some of the properties were alienated through Settlement and Will to the Defendants 3 and 4 on 30.09.1991, 09.11.1994 and 14.09.1992. Further the late C.Kumarasamy Gounder, executed a Will in favour of his wife namely the 1st Defendant in the suit on 20.11.2000 in respect of some of the properties. The properties, which are not mentioned in the Will having right to all the heirs of the deceased C.Kumarasamy Gounder. The plaintiff, her husband and children were aware of the execution of the Will by C.Kumarasamy Gounder. Those properties, which were not included in the Will the husband of the Plaintiff and the Defendants 1 to 4 sold those properties, after the death of C.Kumarasamy Gounder and the rest of the properties were possessed commonly and enjoyed by the legal heirs of C.Kumarasamy Gounder. The Will was executed by the said C.Kumarasamy Gounder, in a good state of



mind and on his own will and he had already fixed his signature after completely reading over the same. The testator C.Kumarasamy Gounder died on 21.10.2001. The knowledge regarding the execution of Will came to know by all the members of the family on the 16th Day ceremony of the deceased C.Kumarasamy Gounder. Due to the age factor of the 1st Defendant and unhelpful of the legal heirs, the revenue records had not been transferred in the name of the 1st Defendant. Except the testament property, all other properties the Plaintiff and the Defendants 1 to 4 having equal right.

9. While so, the Plaintiff cannot claim right over the testamentary properties to the 1st Defendant. The Plaintiff had filed similar petition in order to prolong the case, that too seeking to compare the signature of the Scriber Ko.Muthusamy. The signature found in the documents, which are referred by the Plaintiff for comparison are not admitted as signature of the Scriber Ko.Muthusamy. Already the Plaintiff filed three interlocutory applications which are I.A.Nos.181 to 183 of 2017 for the same relief, which were allowed by the Trial Court. In Revision, this Court had set aside the order passed by the learned Trial Judge for the reason that after completion of the trial the expert opinion not necessary in this case. Even though the Plaintiff is



aware of the said order the Plaintiff had filed this petition stating that the part of relief is excluded.

10. It is the submission of the learned Counsel for the Petitioner that the earlier order was passed for comparison of the signature of the Scribe as the Scribe is alive and his admitted signatures can be compared with the disputed signature in the alleged Will. Now, this petition is filed to compare the signature of the father-in-law of the Revision Petitioner C.Kumarasamy Gounder. The Plaintiff had disputed the alleged Will. Therefore, it is the duty of the Plaintiff to disprove the Will. When the Plaintiff had disputed the Will it is for the Defendants to prove it through proper evidence. Specifically, the Plaintiff had disputed the signature of C.Kumarasamy Gounder, the father-in-law of the Plaintiff. Therefore, it is the duty of the Defendants 1 to 4 to furnish documents containing admitted signature of late C.Kumarasamy Gounder, to enable the forensic experts to compare the admitted signature with the disputed signature on the alleged Will.

11. The order of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, dismissing I.A.No.11 of 2019 in O.S.No.70 of



2013, in the light of the order passed by this Court in C.R.P.(PD).Nos. 2506 to 2508 of 2018 and based on the earlier order passed by this Court in I.A.Nos.181 to 183 of 2017 is not a well reasoned order and it is perverse. The earlier order was with regard to the Scribe and the witnesses and not the signature of the father-in-law of the Plaintiff. Therefore, the order passed by the learned III Additional District and Sessions Judge, Tiruppur, Dharapuram, dated 27.09.2019 is to be set aside and this petition is to be allowed. Otherwise, the Plaintiff will suffer miscarriage of justice.

12. Mr.N.Manokaran, the learned Counsel appearing for the Respondents 2 to 5, who are the sons and daughters of the 1st Respondent submitted that the 1st Respondent died during the pendency of the Civil Revision Petition. It is the submission of the learned Counsel for the Respondents 2 to 5 that late C.Kumarasamy Gounder, the father-in-law of the Revision Petitioner had executed Will in favour of his wife namely the 1st Defendant on 20.11.2000. The testator C.Kumarasamy Gounder, husband of the 1st Respondent died on 21.10.2001. The Plaintiff in O.S.No.70 of 2013 is the daughter-in-law of the 1st Defendant in the suit and late C.Kumarasamy Gounder.



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13. The suit for Partition was filed in the year 2013 by the Plaintiff. The written statement was filed by the Defendants on 15.07.2013 itself. After framing of the issues, the case was posted for trial and the trial commenced. After closing of the Plaintiff evidence, the Defendants evidence was recorded by the Court. The 1st Defendant, mother-in-law of the Plaintiff was examined as D.W.1. After her evidence, the Scribe of the alleged Will and the attesting signature of the attesting witnesses and the same witnesses were examined as D.W.2 and D.W.3. After closing of the Defendants witness, the case was posted for arguments in the month of June 2017. At that stage, the Plaintiff in O.S.No.70 of 2013 filed applications in I.A.Nos.181 to 183 of 2017. The Defendants in O.S.No.70 of 2013 filed counter affidavit vehemently objecting to the contents in the affidavit of the Plaintiff as Petitioner in I.A.Nos.181 to 183 of 2018.

14. After due enquiry, all the three applications filed by the Petitioner have been allowed by the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, by order dated 04.04.2018. Aggrieved by the same, the Defendants in O.S.No.70 of 2013 had filed C.R.P.Nos.2506 to 2508 of



2018 and the same were also allowed by this Court on 17.09.2018 thereby setting aside the order passed by the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram.

15. Point for Consideration:-

1. Whether the order passed by the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, dismissing I.A.No.11 of 2019 in O.S.No.70 of 2013 dated 27.09.2019 is to be set aside?

16. I Perused the copy of the Plaint in O.S.No.70 of 2013, written statement in O.S.No.70 of 2013, petition and affidavit filed in I.A.No.11 of 2019 in O.S.No.70 of 2013, counter affidavit filed by the Respondents in I.A.No.11 of 2019 in O.S.No.70 of 2013, order passed by the learned III Additional District and Sessions Judge, Tiruppur, Dharapuram, dated 27.09.2019 and the copy of the order passed in C.R.P.Nos.2506 to 2508 of 2018 dated 17.09.2018.



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17. On perusal of the Complaint, it is found that the Revision Petitioner herein as Plaintiff had filed a suit for Partition of her 6/15 share in the suit property. In the Complaint itself, the Plaintiff had stated about exchange of notice between the Plaintiff and the Defendants. In the reply to the Plaintiff's notice, the Defendants had stated about the Will executed by the father-in-law of the Plaintiff in favour of the 1st Defendant dated 20.11.2000. For this reply notice, the Plaintiff had sent re-joinder claiming that it is a fraudulent Will created by the Defendants in collusion among themselves with the help of their close friends and relatives. The alleged attester of the Will are the close relatives of the Defendants 1, 2 and 6. The testator of the Will had not known the attester of the Will. The Plaintiff had in the complaint itself disputed the signature of C.Kumarasamy Gounder, father-in-law of the Plaintiff.

18. It is the further averment in the complaint that the alleged attester of the Will is not an acquaintance of C.Kumarasamy Gounder during his lifetime. The alleged Will had not been a registered Will, it has not come into force. Based on the Will, the revenue records had not been changed in the name of the 1st Defendant. Therefore, in the body of the complaint itself the Plaintiff had requested the Court to consider examination of the attester and



the scribe of the Will on the same day to find out the truth of the alleged Will.

After demise of C.Kumarasamy Gounder on 21.10.2001, the 1st Defendant had not changed the patta, chitta and adangal for the said properties in her name based on the Will. Therefore, the Plaintiff had disputed the Will stating that the Will had been created by the Defendants 1 to 6 collusively to deny the share to the Plaintiff.

19. On perusal of the written statement filed by the 1st Defendant it is stated that the husband of the Plaintiff Gunasekaran committed suicide on 12.10.2008 in Subramania Textile Stores. After the body was taken by the police for performing autopsy, the Plaintiff herein as wife of the deceased Gunasekaran objected to perform post mortem. Therefore, there was a peace committee constituted, in which, the Will in favour of the 1st Defendant executed by the father-in-law of the Plaintiff and the copy of the Will were handed over to the Plaintiff by the relatives of the Defendants. After satisfying with the explanation offered by the relatives, the Plaintiff had accepted that the Will executed by the father-in-law of the Plaintiff to the 1st Defendant and also the Plaintiff had given an undertaking to the police officials that the husband of the Plaintiff committed suicide as there was no



issues out of the matrimonial relationship. Only on such undertaking, post mortem on the deceased Gunasekaran was performed and his last rites were performed by the Defendants. After the death of the husband of the Plaintiff, the Plaintiff had taken her jewels and moved out of her matrimonial home to her parents house in Erode. The Plaintiff is not in joint possession of the properties in the family of the Defendants.

20. While so, after the issues were framed, when the Trial Court proceeded, it is the duty of the Plaintiff to have filed petition for comparison of the signature of the late C.Kumarasamy Gounder, the father-in-law of the Plaintiff. She had not done so at the earliest point of time. Only in the fag end of the trial as pointed out in the course of the arguments by the learned Counsel for the Respondents when the case was posted for arguments after closing of evidence by the Defendants, earlier I.A.Nos.181 to 183 of 2017 were filed. Therefore, the Defendants in I.A.No.11 of 2019 in O.S.No.70 of 2013 had filed C.R.P.Nos.2506 to 2508 of 2018. After hearing both the parties, the learned Single Judge of this Court, in the order dated 17.09.2018 had observed that the contention of the Revision Petitioners in C.R.P.Nos.2506 to 2508 of 2018 stating that the Plaintiff as Petitioner in



I.A.Nos.181 to 183 of 2017 in O.S.No.70 of 2013 had filed the I.As only after closing of the Defendants evidence. The Defendants, who are beneficiaries of the Will had proved the execution of the Will by examining the attestor and the scribe of the Will as per Sections 68, 69 and 71 of the Indian Evidence Act.

21. The observation of the learned Single Judge of this Court in C.R.P.(PD).Nos.2506 & 2508 of 2018 in Page Nos. 34 & 35 in Paragraph Nos.8, 9 and 10, reads as follows;-

“ 8. In regard to the execution of a will,the Court has to form a judgment from the evidence, the propounder may let in following the procedure prescribed under Sections 68, 69 and 71 of the Evidence Ac. Even at the risk of repetition I would in this context refer to Section 63(a), according to which the first stage in the execution of the will can be accomplished by signing the will by adopting any one of the three methods namely, (1) the testator putting his signature, (2) the testator putting his mark or some other person putting his signature in the presence of the testator and under his direction.



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That means in order to say that a will has validly been executed it is not necessary that it should contain the signature of the testator; but on the other hand it is enough if the testator affixes his mark or some other person signs the document in the presence of the testator and under his direction. And therefore, in a case where the expert opines that the signature seen on the will is not that of the testator but at the same time the execution has validly been proved, can the Court still hold that the will is not valid relying on the opinion of the expert in preference to the un-controverted evidence proving the execution of the will? My answer is no, because as already noted, under law to hold that a will is valid, it is the execution of the will within the meaning of Section 63, Succession Act that is required to be proved unlike in the case of an ordinary document where under Section 67, Evidence Act the signature should be proved. It may in this context be relevant to note that a propounder can possibly contend that the signature which is opined to be not that of the testator by the expert, in fact it is not his signature but only a mark put by him within the



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meaning of Section 63(a), Succession Act. The Court therefore has no need to form an opinion on the question as to identify of the signature of the testator. This being the position in law, in my judgment, the opinion of the expert as to the identity of the signature of the testator in a will is not a relevant fact.

9. The learned counsel for the petitioner however, argues that the opinion of the expert may be relevant at least, to test the veracity of the testimony of the attestors. What the attestors are expected to speak under Section 68, Evidence Act is only the factum of execution of the will within the meaning of Section 63, Succession Act. They are not obliged under law to testify the identity of the signature of the testator. There is therefore no substance in this argument and hence rejected.

10. In the light of the abovesaid factors, when the revision petitioners being the propounders of the will ow the duty to establish the genuineness of law as provided under Sections 63 of the Indian Succession Act and 68 to 71 of the Indian Evidence Act, it is found that the opinion of the expert as such may not tilt the



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scales in arriving at that conclusion as to the authenticity of the will in question. The same could only be firmly adjudicated based upon the evidence to be adduced by the revision petitioners as per the requirements of law. In such view of the matter, it is found that as rightly argued by the petitioners' counsel, the endeavour of the first respondent / plaintiff in subjecting the will in question for expert's scrutiny may not loom large in determining the issues involved between the parties as regards the proof of the will in question."

22. Also, the order in C.R.P.(PD).Nos.2506 to 2508 of 2018, the learned Single Judge of this Court had pointed out that the trial Judge had without going into the merits and demerits of the contentions as projected by the parties and also without considering the stage at which the applications had come to be preferred by the Plaintiff and on that basis alone, it is his contention that the impugned orders passed by the Court below, without assigning any reason in allowing the same, are liable to be set aside.

23. The learned Single Judge of this Court also observed in the order in



C.R.P.(PD).Nos.2506 to 2508 of 2018 in Page No.38 in Paragraph No.17,

reads as follows;

“ 17. Considering the facts and circumstances of the case, the expert's opinion of the testators' signature in the impugned will not being the crucial factor for determining the truth of the same and de hors the same, when the petitioners would be required to establish the authenticity of the same as per the requirement of law as provided under Section 63 of the Indian Succession Act and Sections 68 to 71 of the Indian Evidence Act by examining the concerned witnesses, who are associated with the Will in question, in such view of this matter, the Court below, without advertent to any of the aspects of the issues involved with reference to the same and also without considering the delay aspect of the applications preferred by the first respondent/plaintiff and furthermore, without assigning any reason whatsoever having endeavoured to entertain the applications preferred by the first respondent / plaintiff, in my considered opinion, the impugned orders passed by the Court below cannot be allowed to sustain any further and accordingly, the same



are liable to be set aside”

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24. Therefore, when the points raised by the Revision Petitioner herein was already discussed by the learned Single Judge of this Court while allowing the C.R.P.Nos.(PD).2506 & 2508 of 2018 by order dated 17.09.2018 and setting aside the order of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, allowing I.A.Nos.181 to 183 of 2017 in O.S.No.70 of 2013 and the same reasoning holds good to this case also. Therefore, the order passed by the III Additional District and Sessions Judge, Tiruppur at Dharapuram, in dismissing I.A.No.11 of 2019 in O.S.No.70 of 2013 by order dated 27.09.2019 is found to be well reasoned order that does not warrant any interference by this Court under Article 227 of the Constitution of India. Therefore, the submission of the learned counsel for the Revision Petitioner is rejected and the arguments made by the learned counsel for the Respondents is found to be acceptable in the light of the common order passed by the learned Single Judge of this Court in C.R.P.(PD).Nos.2506 & 2508 of 2018.

25. In the light of the very same finding given by the learned Single Judge of this Court in a common order in C.R.P.(PD).Nos.2506 & 2508 of



2018, and the order dismissing I.A.No.11 of 2019 in O.S.No.70 of 2013 is found reasonable and acceptable and it does not warrant any interference by this Court. Therefore, the order passed by the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, is confirmed and the present Civil Revision Petition is dismissed as having no merits. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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To

The III Additional District and Sessions Judge,
Tiruppur, Dharapuram.



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SATHI KUMAR SUKUMARA KURUP., J.

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Pre-delivery order made in

C.R.P.No.1285 of 2020



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22.12.2023