



C.R.P.Nos.312 & 314 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2023

PRONOUNCED ON : 07.02.2023

CORAM:

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

C.R.P.Nos.312 & 314 of 2019
and C.M.P.No.2275 of 2019

Meenambal

... Petitioner in
both CRPs

Vs

1. Sudha
2. Minor Deenadhayalan
3. Minor Kaviya

Respondents 2 & 3 are represented
by their natural guardian and
mother 1st respondent Sudha

... Respondents
in both CRPs

Common Prayer :- Civil Revision Petitions are filed under Article 227 of Constitution of India, to set aside the fair & decreetal orders of the learned Subordinate Judge's Court at Kallakurichi, dated 31.07.2018 in I.A.Nos.346 & 347 of 2018 respectively in O.S.No.192 of 2012.

In both C.R.Ps.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.N.Manokaran



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COMMON ORDER

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The Civil Revision Petitions are filed as against fair and decreetal orders dated 31.07.2018 passed in I.A.Nos.346 & 347 of 2018 respectively, in O.S.No.192 of 2012, on the file of the learned Subordinate Judge, Kallakurichi, thereby dismissing the petition to re-open the case and also dismissing the petition seeking hand writing expert's opinion.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed suit for partition claiming 1/12 share in the suit properties. The case of the petitioner is that originally the suit properties belonged to one T.R.Rajagopal Mudaliar and thereafter, the suit properties were divided by the family members by the registered partition deed dated 13.02.2006. As per the partition deed, C schedule property was allotted in favour of her son Ramesh. He was in possession and enjoyment of the property and he died intestate on 24.08.2012. The first respondent is the wife, the second and third respondents are his minor children. The petitioner is the mother of the said deceased Ramesh. The deceased Ramesh and the second and third respondents are being the



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member of co-parcenary family, they are each entitled to have 1/3 share.

On the demise of the said Ramesh, his 1/3 share would devolve to his legal heirs viz., petitioner and the respondents as such the petitioner is entitled to have 1/12 share in the suit property. Hence, she filed the present suit for partition.

3. The respondents resisted the same and had taken specific stand that the suit property was allotted in favour of the said deceased Ramesh by the registered partition deed dated 13.02.2006. Thereafter, the said Ramesh executed a Will dated 09.07.2012, thereby bequeathed entire suit property in favour of the respondents. Therefore, the petitioner is not entitled to have any share over the property.

4. After closing both side evidences, when the suit was posted for arguments, the petitioner filed petition to re-open her evidence and also filed petition to send the Will dated 09.07.2012 for hand writing experts opinion, for the reason that her son never executed any Will and it was fabricated one. She also has taken specific stand that the respondents resisted the suit by way of filing written statement that the entire property



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bequeathed in their favour by the Will dated 09.07.2012. However, they failed to produce the Will along with written statement. Only at the time of examination of D.W.1, it was produced and marked as Ex.B.1. Therefore, the petitioner filed petitions to re-open the case and also to send the alleged Will for handwriting expert's opinion. Both the petitions were dismissed by the trial Court, as against which the present Civil Revision Petitions.

5. The learned counsel appearing for the petitioner submitted that the respondents failed to produce the Will dated 09.07.2012, along with the written statement. Order 8 Rule 1A of C.P.C., specifically contemplates that the documents which are relied upon by the defendants should be produced along with the written statement. Further there are circumstances to show that the deceased Ramesh never executed any Will, since he died due to heart attack on 24.08.2012 viz., immediately after execution of alleged Will dated 09.07.2012. He also relied upon the Will dated 09.07.2012 and contended that the signature of the deceased Ramesh differs from each page to each page.



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5.1. He further submitted that there was no delay in filing the petition seeking hand writing expert's opinion, since a copy of the Will was not produced by the respondents along with the written statement and it was marked only at the time of examination of D.W.1. Immediately after examination of D.W.1, the petitioner filed petition seeking hand writing expert's opinion on the Will dated 09.07.2012. Mere the delay would not automatically mean that the signatures sent for comparison are not contemporaneous. It can be compared with the admitted signature found in the partition deed dated 13.02.2006. Further it is completely judicious discretion of the Court depending upon the individual facts and circumstances of the case to seek or not seek experts opinion as to the comparison of the disputed signature with the admitted signature under Section 45 of the Indian Evidence Act.

5.2. In support of his contention, he relied upon the judgment reported in **2016(2) CTC 481** in the case of ***Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu & ors***, in which the



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Hon'ble Divison Bench of the High Court of Hyderabad held as follows:-

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“36. *We accordingly answer the reference as under:*

It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/ signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/signature and the admitted handwriting/signature are capable of comparison for a



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*viable expert opinion. The view expressed by the Division Bench in **Janachaitanya Housing Limited v/s. Divya financiers, 2008 (3) ALT 409 (DB)**, as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue.”*

Hence, he prayed to allow both the Civil Revision Petitions.

6. Per contra, the learned counsel appearing for the respondents submitted that the burden of proof on the shoulder of the respondents to prove the Will dated 09.07.2012, in the manner known to law, as contemplated under Sections 68 to 71 of the Indian Evidence Act. Therefore, the identity of signature of testator in Will is not relevant. He further submitted that the Will dated 09.07.2012 was already disclosed while filing the written statement on 02.07.2013 itself. The petitioner did not take any steps to send the said document for hand writing experts opinion. In fact, the petitioner failed to deny the same. After examination of both side witnesses and when the suit was posted for arguments, the petitioner filed this petition.



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6.1. In support of his contention, the learned counsel appearing for the respondents relied upon the judgment reported in **2018 (3) MWN (Civil) 584** in the case of **Periathal and ors., Vs. Gomathi and anr.**, in which this Court held that opinion of expert as to identity the signature of testator in Will is not relevant. Duty of propounder of Will to establish genuineness as per requirement of law under the Evidence Act and Succession Act. Opinionative decision is no conclusive proof as to authenticity of Will in question. The burden of proof is upon propounder to establish genuineness of Will and not for the plaintiff to prove negative.

6.2. He also relied 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



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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 the testator in a Will is not a relevant fact. Hence, the expert's opinion is no way useful to prove the Will. Therefore, he prayed to dismiss the present Civil Revision Petitions.

7. Heard Mr.A.Muthukumar, learned counsel appearing for the petitioner and Mr.N.Manokaran, learned counsel appearing for the respondents in both C.R.Ps.

8. The petitioner is none other than the mother-in-law of the first respondent and grandmother of other respondents. Originally the suit property belonged to the petitioner's husband and by the partition deed dated 13.02.2006, the suit property was allotted in favour of her son Ramesh. He died intestate on 24.08.2012 and the suit property devolved upon the petitioner and the respondents herein as his legal heirs. Therefore, the petitioner filed suit for partition claiming 1/12 share in the suit property.



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9. It was resisted by the respondents by stating that the suit property, which was allotted in favour the said Ramesh, has already been bequeathed in their favour by the Will dated 09.07.2012. Though the respondents failed to produce the said Will dated 09.07.2012 along with the written statement, the petitioner had knowledge about the Will on 02.07.2013 itself. However, the petitioner did not take any steps to send the Will for hand writing expert's opinion. After examination of both side witnesses and when the suit was posted for arguments, the petitioner filed the petition to identity of signatures of the executant in Will.

10. The only point for consideration is that whether the expert opinion, in order to prove the Will, is required or not?

11. The Hon'ble Supreme Court of India and this Court repeatedly held that opinion of experts as to identity of signatures of testator in Will is not relevant and the decision on this aspect has already



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been settled. In the case of ***R.Saraswathy Vs. Bhavathy Ammal & anr*** reported in ***1988(2) Ker.LJ 512.***, the High Court of Kerala held as follows :-

“7. It is in this backdrop the question whether the opinion of an expert as to the identity of the signature of the testator in the will is relevant to decide the issue, whether the will in dispute has validly been executed. When would the opinion of an expert be relevant, is stated in Section 45 of the Evidence Act. It provides that when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to the identity of handwriting or finger-impressions, the opinions upon that point, of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger-impressions are relevant facts. The expert must necessarily be one who has acquired certain special knowledge, skill or experience in any science or art or profession. The opinion of an expert therefore is not relevant where the subject-matter of enquiry is not one pertaining to any of the matters enumerated under the section. In other words an expert witness may not be asked to state his opinion upon a question of fact which is the very issue that requires decision on other evidence, the



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production whereof is controlled by the other provisions of the Evidence Act. For instance an expert cannot be allowed to give his opinion upon the construction of documents because this, being a matter of law, is a question solely for the court to decide. Concisely stated :

"It is only where the matter inquired of lies within the range of the peculiar skill and experience of the witness, and is one of which the ordinary knowledge and experience of mankind does not enable them to see, what inference should be drawn from the facts, that the witness may supply opinion as a guide". (Kennedy v. People, 39 NY 245) That means, the opinion of experts is not admissible in regard to matters upon which the court can form a judgment from other evidence and circumstances."

Thus it is clear that, the opinion of experts is not admissible in regard to matters upon which the Court can form a judgment from other evidence and circumstances.

12. In the case on hand, 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 respondents and not for the petitioner to prove the same. The respondents are being the propounder of the Will owe the duty



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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 respondents as per the requirements of law.

13. Further the expert's opinion of the testator's signature in the Will in question not being the crucial factor for determining the truth of the same and de hors the same, the respondents should be required to establish the authenticity of the Will as provided under Section 63 of the Indian Succession Act and Sections 68 to 71 of the Indian Evidence Act, by examining the witnesses, who were associated with the Will in question. In such view of the matter, the Court below rightly dismissed the petitions and this Court finds no infirmity or illegality in the order passed by the Court below.

14. Accordingly, both the Civil Revision Petitions stand dismissed. Consequently, connected miscellaneous petition is closed.



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There shall be no order as to costs.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order

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To

1. The Subordinate Judge,
Kallakurichi.



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G.K.ILANTHIRAIYAN, J.,

rts

COMMON ORDER IN
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