



C.R.P(MD)Nos.395 & 396 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.02.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)Nos.395 & 396 of 2023

and

C.M.P(MD)No.1946 of 2023

Murugan

... Petitioner/Petitioner/
2nd Defendant
(In both cases)

Vs.

Muthiah (Died)

... -----/1st Respondent/
1st Defendant
(In both cases)

Kalidurai

... 1st Respondent/2nd Respondent/
Plaintiff
(In both cases)

PRAYER in C.R.P(MD)No.395 of 2023 : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order in I.A.No.9 of 2022 in O.S.No.135/2010 passed by Principal District Munsif Court, Ambasamudharam dated 25-01-2023.

PRAYER in C.R.P(MD)No.396 of 2023 : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and



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decreetal order in I.A.No.10 of 2022 in O.S.No.135/2010 passed by Principal District Munsif Court, Ambasamudharam dated 25-01-2023.

For Petitioner : Mr.K.P.Narayanakumar
(In both cases)

ORDER

The present revision petitions have been filed by the defendant in a suit of bare injunction based upon a Will, dated 13.08.2009.

2. The plaintiff had prayed for a decree for permanent injunction based upon a Will, dated 13.08.2009 said to have been executed by one Sankaranarayanan. The 2nd defendant had filed a written statement strongly disputing the execution and attestation of the Will. The defendant has further contended that the document is a forged document and the said Sankaranarayanan had never executed any Will. Therefore, it is clear that the entire burden is upon the plaintiff to establish the execution and attestation of the said Will. When the suit is posted for arguments, the defendant had filed I.A.No.10 of 2022 to compare the signature of Sankaranarayanan in the disputed Will with that of a sale deed said to have been executed by the said Sankaranarayanan. The said application came to be dismissed by the trial Court on the ground that the



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said application has been filed belatedly. Challenging the same, the present revision petition has been filed.

3. It is settled position of law only the proponent of the Will has to prove the execution and attestation of the same beyond all reasonable doubts. In case of any suspicious circumstances surrounding the Will, it is for the plaintiff to clear those suspicions. When the burden of proof is upon the plaintiff, the defendant has unnecessarily filed an application to compare the signature of the testator with that of admitted signature of the testator in another document that too at the stage of arguments. Therefore, I do not find any merits in the revision petition.

4. Hence, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

21.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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Note : Issue Order Copy on 22.02.2023.



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To

- 1.The Principal District Munsif Court,
Ambasamudharam.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
C.R.P(MD)Nos.395 & 396 of 2023

21.02.2023