



W.P(MD)No.17835 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17835 of 2022

and

W.M.P(MD)Nos.13023 & 13024 of 2022

Shankari

... Petitioner

Vs

1.The Inspector General of Registration,
No.100, Santhome High Road,
Mullimanagar,
Madavalipalkam,
Raja Annamalaipuram,
Chennai.

2.The District Registrar,
District Registrar's Office,
Karur.

3.The Sub-Registrar,
Joint – 1 – Karur,
Collector's Office Campus,
Karur.

4.Meena

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in respect of Case No.1/2022 on the file of the third respondent and quash the same as illegal.



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For Petitioner : Mr.V.Meenakshi Sundaram
for Mr.RM.Sivakumar

For Respondents : Mr.N.Satheeskumar
Additional Government Pleader
for R.1 to R.3

Mr.L.Infant Dinesh
for Mr.Mahaboob Athiff for R.4

ORDER

Heard the learned counsel on either side.

2.The fourth respondent has presented a document purporting to be a Will executed in her favour by her father-in-law late Thiru.Panneer Selvam. The petitioner claims that the said late Thiru.Panneer Selvam is her father, which claim is strongly contested by the fourth respondent. The Will is said to have been executed on 14.06.2013. It is true that a Will can be presented for registration at any point of time. The petitioner's apprehension is that since in O.S.No.69 of 2017 on the file of District Court, Tiruchirappalli filed by her mother, the Will in question has been put in issue, the registration of the same at the instance of the fourth respondent at this point of time may strengthen her hands.



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3.The issue that arises for consideration is if for the reasons projected by the writ petitioner, the fourth respondent can be denied the right to present the document for registration. Section 41 of the Registration Act, 1908 and Rules 69 to 72 of the Tamil Nadu Registration Rules, 1983 are the relevant provisions. They read as follows:-

*“Section 41. **Registration of wills and authorities to adopt.**— (1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.*

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

(a) that the will or authority was executed by the testator or donor, as the case may be;

(b) that the testator or donor is dead; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

“Rule 69. When a will or an authority to adopt is presented for registration after the death of the testator or the donor, the registering officer shall fix a day for the enquiry contemplated by section 41 (2) of the Act and shall cause notice of the enquiry (a) to be served on the persons to whom in his opinion special notice should be given (b) to be posted in a conspicuous part of the



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registration office and (c) to be published (i) in the Gazette of the district in testator or donor lived, (ii) in the Gazette of the district in which the property of the deceased is situated and (iii) in the villages where the testator or donor lived, where interested parties may reside and where the property of the deceased is situated. The cost of the service of the notice and of its publication shall be levied in advances from the person who presents the document for registration.

Rule 70. If a person presenting a will or an authority to adopt, or a person who objects to the registration of such a document on the ground that it was not executed by the testator or donor or that the testator or donor is not dead or that the person presenting the document is not entitled to present the same under section 40 of the Act, desires that witnesses should be summoned, the request shall be complied with and the procedure prescribed in Chapter XII shall be followed.

Rule 71. (i) As each person is examined his signature shall be obtained on the document below the endorsement of presentation in the following form:-

The witnesses whose signature are affixed below have been examined under the clause (2) of section 41 of the Indian Registration Act, 1908, in reference to the document:-

E.F. with addition

G.H. do

L.J. do

27th January 1940

Signature of Registering officer.



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K.L. with addition

M.N. do

O.P. do

28th January 1940 Signature of Registering officer.

Q.R. with addition

S.T. do

6th February 1940 Signature of Registering officer.

(ii) If, after the conclusion of the examination of the witnesses, the registering officer should decide to register the document, an endorsement in the following form shall be made on it and its registration shall be completed:-

I am satisfied from the evidence of the witnesses whose signatures appear above-

(a) that the will (or authority to adopt) was executed by the testator.

(b) that the testator (or donor) is dead.

(c) that the person presenting the will (or authority to adopt) is entitled to present the same. Date: Signature of Registering officer.

(iii) Should the registering officer decide to refuse registration, the usual endorsement or refusal shall be entered on the document.



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Rule 72. (i) A registering officer when enquiring under section 41(2) into the execution of a will or of an authority to adopt shall invariably, before registering the document or refusing registration, prepare and place on record a memorandum in English containing a summary of the evidence and the reasons for registration or refusal, as the case may be. A copy of any such memorandum prepared by a sub-registrar shall be submitted to the District Registrar forthwith.

(ii) When a will or an authority to adopt is refused registration the refusal order to be entered in Book 2 shall be a reproduction of the memorandum.”

In ***Lanka Lakshmanna vs. Lanka Varthanamma AIR 1919 Madras 540***, it was held that the deposition of witnesses examined at an enquiry held by Sub Registrar under Section 41(2) of the Registration Act regarding the genuineness of a Will, at which the opposing parties had opportunity of cross-examination, are admissible in evidence under Section 33 of the Evidence Act in a subsequent suit raising the same question between the same parties. The Hon'ble Division Bench made it clear that even though the Rules do not provide expressly either for the examination or cross-examination of the witnesses summoned on either side, they imply that they are to be both examined and cross-examined in the ordinary way, especially as the Rules contemplates that the parties may appear by counsel. The Hon'ble Division



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Bench further noted that it was the invariable practice and the practice of the Court is the law of the Court.

4. In yet another judgment reported *(1992) 2 L.W. 591 (R.Sourirajan vs. District Registrar)*, it was held that the fact that the Will was registered was not by itself sufficient to dispel the suspicion without scrutiny of the evidence of registration. In other words, registration of the Will under Section 41 of the Act will not by itself be determinative or conclusive of its genuineness. The Civil Court is also not bound by the decision of the registering authority. The petitioner will thus have full opportunity to prove his case both before the registering authority in the enquiry under Section 41 as well as the in the pending civil suit where the genuineness of the Will has been put in issue.

5. I make it clear that even if the Will is registered, the fourth respondent is obliged to prove the Will before the civil Court in the said suit independently and on its own merits.

6. The petitioner further alleges that the Will is forged. She is said to have given criminal complaint. The observations made in respect of the civil suit will apply equally in the case of the criminal complaint said to have been given by the petitioner. In other words, the jurisdictional police will not close the criminal complaint said to have been filed by the petitioner by citing the



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registration of the Will. The fourth respondent has the right under Section 41 of the Registration Act to present the document in question. The registering authority has issued the impugned notice to the petitioner calling upon her to offer her objections. The said communication is in consonance with the statutory provisions. It does not call for interference. It is for the registering authority to take a call after enquiring the parties concerned under Rule 69 of the Tamil Nadu Registration Rules, 1983. The registering authority shall issue fresh notices to the parties concerned and pass final order on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order.

7.This writ petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.01.2023

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



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- To
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 - 2.The District Registrar,
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