



CRP (MD) No.1179 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	04.08.2023
Pronounced on	07.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1179 of 2020
and
CMP(MD)No.7499 of 2020

S.Uma

... Petitioner

Vs.

V.Gopi Prakash

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 02.12.2020 passed in I.A.No.1 of 2020 in O.S.No.362 of 2018 on the file of the Sub Court, Eraniel.

For Petitioner : Mr.K.N.Thampi

For Respondent : Mr.M.P.Senthil

ORDER

This civil revision petition is preferred as against the order passed in



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I.A.No.01 of 2020 in O.S.No.362 of 2018 on the file of Sub Court, Eraniel,
dated 02.12.2020.

2. The suit in O.S.No.362 of 2018 is filed by the petitioner/plaintiff for partition claiming half share in the suit property. During the pendency of the suit, the petitioner/plaintiff filed a petition in I.A.No.01 of 2020 for production of document No.2627 dated 23.06.1951 on the file of Sub Registrar's Office, Colachel and the original filing sheet of the Will deed No. 8 dated 17.04.1976, executed by Madia Pillai at Sub Registrar's Office, Colachel. The said application was dismissed. Against which, the present revision is preferred.

3. The learned counsel for the revision petitioner would submit that the original filing sheet of the Will deed dated 17.04.1976 is in the custody of the defendant/respondent. Since he failed to produce the same before the trial Court, the revision petitioner moved an application to send for the document from the Sub Registrar's Office, Colachel. The learned counsel further submitted that as per the registered Will deed dated 17.04.1976 executed by



the Madia Pillai, the plaintiff is entitled to one half share in the plaint schedule property. The defendant denied the said execution of the Will and the thumb impression affixed in the said document is not of the Madia pillai. In order to find out the truth, the above documents are necessary for comparison of signature by expert. Hence, he prayed for setting aside the order of the trial Court.

4. On the other hand, the learned counsel for the respondent would submit that the suit was in the stage of arguments after conclusion of the trial and the petitioner, with the *mala fide* intention to fill up the lacuna in the evidence, filed the above petition in a belated stage. He would further submit that only at the instance of the petitioner, the document which was submitted by the Sub Registrar, Colachel was returned back and in such circumstances, the petitioner is estopped from seeking an order to call for the said documents. The petitioner cannot be permitted to file repeated petitions as per his whims and fancies and there is no *bona fide* reason stated in the petition to call for the documents for the second time. It is further submitted that the petitioner is not entitled to claim any share in the suit property and



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the said Madia Pillai did not execute any Will as alleged by the petitioner.

Therefore, there is no merit in the above application and the trial Court has rightly dismissed the petition, which calls for no interference.

5. Heard on both sides and records perused.

6. On perusal of records, it is seen that as per the common order passed by this Court in CRP(MD)Nos.856 and 859 of 2016, the case was reopened and order was passed by the trial Court directing the Sub Registrar, Colachel, to produce the Will, dated 17.04.1976, said to have been executed by Madia Pillai and the original thumb impression register maintained in the Sub Registrar's Office, Colachel. As per the said order, the case was posted for further proceedings. At that time, the petitioner filed a memo stating that the thumb impression of Madia Pillai was not obtained in the thumb impression register, since the petitioner was personally known to the then Sub Registrar, Colachel, who registered the document and therefore, it is not necessary to take steps for producing the above register for comparison by expert. Thereafter, the petitioner moved an application on 30.04.2019 for production



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of original thumb impression register of the registered sale deed dated 23.06.1951 as document No.2627 and the original filing sheet of the Will deed No.8 dated 17.04.1976 from the Sub Registrar's Office, Colachel. However, the trial Court dismissed the said application by stating that the averments made in the memo and in the petition, are contrary to each other and there is no proof with regard to availability of document in Sub Registrar's Office, Colachel.

7. The question of availability of the document in the Sub Registrar Office, Colachel can be ascertained only when the documents are summoned. Moreover, to find out whether the signature found in the disputed document belongs to Madia Pillai, the document available in the Sub Registrar's Office, Colachel, can be produced and the disputed signature can be compared with that of the admitted signature of the Madia Pillai. According to the respondent, the signature found in the disputed document, namely, Will deed dated 17.04.1976 does not belong to Madia Pillai. Therefore, it has become necessary for comparing the signature in the disputed document and the document available in the Sub Registrar's Office, Colachel. Therefore, in



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order to find out the truth, the trial Court ought to have exercised its discretion in allowing the application by summoning the above documents.

Therefore, the impugned order passed by the trial Court is liable to be set aside.

8. In the result, this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.01 of 2020 in O.S.No.362 of 2018, on the file of the Sub Court, Eraniel, dated 02.12.2020 and the same is allowed. No costs. Consequently, connected miscellaneous petition is closed.

07.09.2023

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

The Subordinate Judge,
Eraniel.



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order made in
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