



C.R.P(MD)Nos.2167 and 2169 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)Nos.2167 and 2169 of 2019

and

C.M.P(MD)No.11367 of 2019

C.R.P(MD)No.2167 of 2019

1.S.Krishnamoorthy

2.N.Rajeswari

3.K.Ravichandran

4.K.Jeyakumar

5.Dhanalakshmi

...Petitioners/
Respondents 1, 3, 4, 5 & 7/
Plaintiffs 1, 3, 4, 5 & 7

Vs.

1.G.Rajamani

2.R.Mallika

3.K.Lakshmi

4.R.Logeswaran

...Respondents 1 to 4/
Respondents 1 to 4/
Defendants 1 to 4

5.R.Gowri

6.S.Latha

7.N.Jeyalakshmi



C.R.P(MD)Nos.2167 and 2169 of 2019

...Respondents 5 to 8/
Respondents 2, 6, 8 & 9/
Plaintiffs 2, 6, 8 & 9

8.P.Padma

9.S.Rajendran

10.Moorthy

11.G.Sarangapani

12.T.Mohan Arockiasamy

13.R.Kumaran

...Respondents 9 to 13/
Respondents 10 to 14/
Defendants 10 to 14

(No Relief claimed against the respondents 5 to 13. Hence they are given up)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 16.08.2019 made in I.A.No.1 of 2019 in O.S.No.287 of 2010 on the file of the I Additional Subordinate Judge, Trichirappalli.

For Petitioners : Mr.P.Arun Jayatram

For R1 & R3 : No Appearance

For R2 & R4 : Mr.K.S.Kathiravan
For Mr.C.Gobinath

For R5 to R13 : Given up

C.R.P(MD)No.2169 of 2019

1.S.Krishnamoorthy

2.N.Rajeswari



C.R.P(MD)Nos.2167 and 2169 of 2019

3.K.Ravichandran

4.K.Jeyakumar

5.Dhanalakshmi

...Petitioners/
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Plaintiffs 1, 3, 4, 5 & 7

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...Respondents 9 to 13/
Respondents 10 to 14/
Defendants 10 to 14

*(No Relief claimed against the
respondents 5 to 13. Hence they are
given up)*



C.R.P(MD)Nos.2167 and 2169 of 2019

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 16.08.2019 made in I.A.No.2 of 2019 in O.S.No.287 of 2010 on the file of the learned I Additional Subordinate Judge, Trichirappalli.

For Petitioners : Mr.P.Arun Jayatram

For R1 & R3 : No Appearance

For R2 & R4 : Mr.K.S.Kathiravan
For Mr.C.Gobinath

For R5 to R13 : Given up

COMMON ORDER

This civil revision petition has been filed against the order passed by the learned I Additional Subordinate Judge, Trichirappalli in I.A.Nos. 1 and 2 of 2019 in O.S.No.287 of 2010, dated 16.08.2019.

2. For the sake of convenience, the parties will be referred as per the litigative status before the Trial Court.

3. It appears that the petitioners have filed an application to recall D.W.1 and also filed an another application to receive the additional document, namely, registered Will, dated 11.12.1980. According to the petitioners, D.W.1 is the Maternal Aunt, who is the second defendant in



the suit. After examination of the second defendant as D.W.1, the fifth defendant was examined as D.W.2 in the suit.

4. The very case of the defendants is that, by virtue of Will deed, dated 10.12.1996, they are the owners of the suit schedule property, wherein, the plaintiffs seek for partition. It appears that after examination of D.W.2, when the petitioners took summons to the attestors of the Will, the same has been returned with an endorsement "Left". Therefore, by invoking Section 69 of the Indian Evidence Act, the petitioners wanted to prove the signature of the testator.

5. It appears that, in the process, when D.W.1 was cross-examined, she referred to about the another Will, dated 11.12.1980, which has been executed by the deceased Pappathiammal. The petitioners stated that since there was a confrontation in respect of the earlier Will dated 11.12.1980, the same needs to be marked before the Court. Hence, filed an application to re-call D.W.1.

6. The said application was resisted by the respondents that when there is no original Will filed before the Court, no question of comparing the Will arise. Therefore, there is no purpose in re-calling D.W.1.



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7. However, the learned Trial Judge after analyzing all these aspects has allowed the application on the ground that the petitioners did not want to compare the signature and wanted only to mark the Will.

8. Aggrieved with the order, the respondents/plaintiffs are before this Court.

9. The learned counsel for the petitioners vehemently submits that when the defendants did not file the original Will, dated 10.12.1996, no purpose would arise for the Court to compare the signature of the testator, Pappathiammal with that of her earlier Will, dated 11.12.1980.

10. Per contra, the learned counsel for the respondents herein would invite the attention of the affidavit filed before the Court below, and would explain that they have moved an application only to bring on record the earlier Will, dated 11.12.1980 before the Court through the examination of D.W.1.

11. I have given my anxious consideration to either side submissions.



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C.R.P(MD)Nos.2167 and 2169 of 2019

12. The sum and substance of the objection raised by the learned counsel for the petitioners herein is that, the defendants/respondents are attempting to fill up the lacuna and also wants to mark certain documents contravening to Section 68 of the Indian Evidence Act. This Court carefully gone through the affidavit. From the analysis, what they wanted is to bring on record the earlier Will, dated 11.12.1980 and it was necessitated only in view of the cross-examination made by the plaintiffs.

13. Therefore, this Court is of the view that as rightly observed by the Court below, the very re-call and the leave of the Court sought for by the petitioner for receiving the earlier Will, dated 11.12.1980 is not for comparison, but necessitated only based upon the question posed by the plaintiffs. Therefore, this Court is of the view that there are no justifiable reasons to interfere with the order of the Court below. Therefore, there is no merit in C.R.P(MD)No.2167 of 2019 and deserves to be dismissed.

14. In CRP(MD)No.2169 of 2019, Since the petitioner wants only to mark the earlier, Will dated 11.12.1980, the learned Trial Judge has already ordered to receive the Will, dated 11.12.1980 subject to proof and relevancy in I.A.No.2 of 2019. Therefore, this Court finds no



C.R.P(MD)Nos.2167 and 2169 of 2019

grounds to interfere with the well considered order and this civil revision petition is also liable to be dismissed.

15. In the result, both the Civil Revision Petitions are **dismissed**.

No costs. Consequently, connected miscellaneous petition is closed.

07.08.2023

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

1.The learned I Additional Subordinate Judge,
Trichirappalli.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)Nos.2167 and 2169 of 2019

C.KUMARAPPAN,J.

SN

C.R.P(MD)Nos.2167
and 2169 of 2019

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