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C.R.P.No.3027 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.3027 of 2024
and C.M.P.No.16290 of 2024

1.M.Chinnasamy

2.M.Nataraj

... Petitioners

Vs

M.Ruckmani

... Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 09.07.2024 made in I.A.No.819 of 2023 in O.S.No.157 of 2015 on the file of the Subordinate Judge, Avinashi.

For Petitioner : Mr.T.Balaji

ORDER

The petitioners are the defendants in O.S.No.157 of 2015, on the file of Sub Court, Avinashi in the the Suit filed by the respondent/plaintiff partition Suit against the family property and consequently injunction and other reliefs. The Suit is now at the stage

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of arguments, plaintiff's evidence completed and the defendants, examined, three witnesses, marked documents. At that stage, the respondent/plaintiff filed I.A.No.819 of 2023 under Order 26 Rule 10A r/w Section 45 of the Indian Evidence Act to send the original will Ex.B3, dated 01.11.2004, to compare the signatures of Murugana Gounder, father of the plaintiff and the defendants, which is said to be available in the Transfer Certificate of Kandasamy, s/o respondent and the signatures found in Nambiyampalayam Primary Cooperative Bank and Coimbatore Central Cooperative Bank for forensic examination.

2. The contention of the petitioner is that the school transfer certificate of the plaintiff's son Kandasamy is a superfluous document and the signature found therein is not that of Murugana Gounder. The comparative document is a photostat copy and signatures cannot be studied based on photostat documents. On the other hand, Ex.P.1 is the document marked by the respondent/plaintiff which consist of 15 pages and in all 15 pages, the signatures of Murugana Gounder is available and the original is with the respondent/plaintiff. This

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document can be sent along with the disputed Will/Ex.B.3 dated 01.11.2004 and both can be compared and opinion can be obtained. Further submitted that the Trial Court not considered this aspect despite specific plea of the petitioners' in their counter informing forwarding of Ex.P.1 along with Ex.B.3. But for the reason best known, Trial Court recognises the School Transfer Certificate of Kandasamy, son of respondent/plaintiff which documents not referred either in the plaint or in the proof affidavit. But suddenly the unmarked document is attempted to be compared with Ex.B.3 Will, Ex.P.1 referred in the counter and in the evidence of defendants, admittedly the Will executed by the Murugana Gounder as early as on 01.11.2004.

3. Hence, the learned counsel submitted that the original document as Ex.P.1 which is available with the respondent/plaintiff to be forwarded along with the disputed documents to make a comparative study of signatures of Murugana Gounder found in Ex.B.3 along with Ex.P.1 and this exercise can be completed within a stipulated period, now the Suit is at the penultimate stage, but the disputed Will Ex.B.3

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and admitted document Ex.P.1 can be forwarded, since the Expert Evidence under Section 45 of Evidence Act will resolve the Suit issues and be helpful for the Trial Court to arrive at a just decision.

4.Considering the facts and circumstances of the case and since it is a limited prayer sought, notice to the respondents dispensed. This Court directs the Court below to collect and send the Ex.P.1/Original document which is available with the respondent/plaintiff along with other documents and Ex.B.3 to handwriting expert and to get the report. The handwriting expert attached to the Forensic Department to give priority and to complete the comparative study and send a report within a period of two months from the date of receipt of disputed, comparative and admitted documents. On receipt of the report, the Trial Court to complete the Suit proceedings without delay preferably within three months from the date of receipt of the report.

5.In fine, this Civil Revision Petition is disposed of on the above terms. However, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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M.NIRMAL KUMAR,J.

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To

The Sub-Court, Avinashi

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