



C.R.P.No.3429 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.3429 of 2024

and

C.M.P.No.18561 of 2024

1.R.Vinoth

2.Kavitha

..... Petitioners

-Versus-

1.Sivagangai

2.Tamizhmalar Selvam

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 06.07.2024 passed by the learned Principal District Munsif, Tindivanam in I.A.No.83 of 2024 in O.S.No.264 of 2014, by allowing the civil revision petition.

For Petitioners : Mr.T.Dhanasekaran

ORDER

This civil revision petition arises against an order dated 26.04.2024 passed by the learned Principal District Munsif at Tindivanam in I.A.No.83 of 2024 in O.S.No.264 of 2014.

2. The suit in O.S.No.264 of 2014 is filed for the following reliefs:



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(i) declaration that the 1st plaintiff is entitled to 4/5th share in the schedule mentioned properties and the remaining 1/5th share belongs to the 2nd plaintiff.;

(ii) declaration that the settlement deed executed by the 1st defendant in favour of her husband on 23.08.2013 is null and void; and

(iii) declaration that the sale deed executed by the 1st defendant in favour of the 2nd defendant on 27.06.2013 is also null and void.

3. The case of the plaintiffs is that the suit properties belonged to their grandmother Meenambal, who had executed a “WILL” on 05.02.2010, bequeathing the properties in their favour. Since they claim right and title under a WILL, the plaintiffs 1 and 2 wanted to send the said document for an expert opinion on thumb impression to show that it had been executed by Meenambal. To that effect, they took out an application in I.A.No.83 of 2024 which came to be dismissed. Hence, the revision.

4. Heard Mr.T.Dhanasekaran appearing for the civil revision petitioner.

5. A WILL should be proved by examining the attesting witnesses. This is in terms of Section 68 of the Indian Evidence Act, 1872. If the plaintiffs want



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to prove the WILL then, they have to summon one or two of the attesting witnesses and thereafter, proceed to prove the same. By proving the thumb impression of Meenambal, the court cannot come to a conclusion that the WILL was duly executed by her. Due execution of a “WILL” requires evidence of the attesting witnesses and further evidence at their instance that the testator was in a proper state of mind to dispose of the properties by way of the testament. The report of a fingerprint expert even if it is in favour of the plaintiffs will not prove the attestation or due execution by the testator.

6. Mr.T.Dhanasekaran is right that the question of delay cannot be put against the plaintiffs. However, since Section 68 of the Indian Evidence Act, 1872 gives enough opportunity to the plaintiffs to prove the case, a Forensic Expert's report on the thumb impression is unnecessary.

7. I do not find any reason to interfere with the order of the court below.

In the result, the civil revision petition fails and the same is dismissed accordingly. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To



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1. The Principal District Munsif, Tindivanam, Villupuram District.

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V.LAKSHMINARAYANAN.J.,
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