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C.R.P.No.1054 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1054 of 2017
and C.M.P.No.5090 of 2017

Arokiamary Mont Morency (Died)
Marie Fathima Limeron @ Mothiammal (Died)
1.Lizeron Ezhil Trout
2.Fernandez Lizeron
3.lizeron Charles Borromeo .. Petitioners

Versus

1.Mont Morency Francis
2.Sengeni
3.Ammayppan
4.Lizeron Marie Viola .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 02.01.2017 in I.A.No.162/2014 in O.S.No.29/2006 on the file of the Principal Sub Court, Puducherry.

For Petitioners : Mr.R.Rajarajan

For Respondent 1 : Mr.K.S.Karthik Raja



C.R.P.No.1054 of 2017

WEB COPY

ORDER

This civil revision petition arises against the order passed by the learned Principal Subordinate Judge at Puducherry in I.A.No.162 of 2014 in O.S.No.29 of 2006 dated 02.01.2017.

2. O.S.No.29 of 2006 was originally presented as an indigent original petition before the court in Puducherry.

3. The case of the original plaintiff is that the property, which belonged to the Government, was allotted in her favour on 15.08.1972. The allotment was made in her favour on account of the fact that she had been residing over the suit schedule mentioned property from 1940. On 15.10.1991, the first defendant obtained a “WILL” from the original plaintiff in his favour and subsequently, on 24.02.1995 also obtained a power of attorney appointing himself as an agent of the original plaintiff. The original plaintiff pleaded, she cancelled the “WILL” as well as the general power of attorney on 02.01.1997. Since she was forced out of the property on 29.05.1997, after issuance of a lawyer's notice, she presented a



C.R.P.No.1054 of 2017

WEB COPY

suit for declaration of her title over the B schedule mentioned property and for recovery of possession.

4. Pending the litigation, the original plaintiff passed away on 29.03.2002. Thereafter, the second plaintiff came on record pleading that on 02.12.1998, the original plaintiff bequeathed B schedule property in her favour. Therefore, she filed an application to bring herself on record and continue the proceedings. The said application was allowed.

5. Taking advantage of the fact that she has been brought on record as legal representatives, she amended the plaint stating that she is entitled to recover possession from the first defendant as she is the owner of the property. The amendment application was not challenged by the first defendant. Therefore, the plaint, as it stands today, is a litigation between the second plaintiff and the first defendant, instead of it, being as it was originally launched between the first plaintiff and the first defendant.

6. The first defendant filed a written statement, not denying the execution and attestation of the WILL dated 02.12.1998 executed by the



C.R.P.No.1054 of 2017

first plaintiff in favour of the second plaintiff, but pleaded that the said “WILL” is not valid and binding, since it was executed under vitiating circumstances. On account of this plea, the major burden of the second plaintiff has been lifted by the first defendant and he has taken upon himself the duty of proving that the WILL dated 02.12.1998 is vitiated due to circumstances pleaded in paragraph No.10 of his written statement.

7. As the second plaintiff had to prove the WILL, she came forward with an application in I.A.No.158 of 2013 seeking the “WILL” dated 02.12.1998 marked as Ex.A9 be compared with the thumb impression register to be produced by the District Registrar with respect to Ex.A9. Thereafter, she filed an application in I.A.No.162 of 2014 seeking that the WILL dated 02.12.1998 be compared with the thumb impressions in vakalat and plaint by the Finger Print Bureau, Police Department, Puducherry and to submit a report on the same.

8. It was, at this stage, that the first defendant denied the mark on the document. He pleaded that the thumb impression register, if it will be produced by the District Registrar, was with respect to Ex.A9, WILL and it



C.R.P.No.1054 of 2017

WEB COPY

cannot be used for any other purpose. He pleaded that no purpose will be served by comparing the Thumb Impression on the vakalat and plaint as the same came into effect after the execution of the Will dated 02.12.1998.

9. The learned Trial Judge was persuaded to accept the reasoning that was given by the defendants. She held that as the thumb impression in the vakalat and plaint have come about after the presentation of the suit, the said document cannot be compared and dismissed both the applications. Aggrieved by the dismissal of I.A.No.162 of 2014, this revision has been preferred.

10. I heard Mr.R.Rajaraman for the civil revision petitioners and Mr.K.S.Karthik Raja for the first respondent.

11. The learned counsel appearing for the respective parties reiterated the submissions that had been made by their counter parts in the Trial Court.

12. I have gone through the records and carefully analysed them.



C.R.P.No.1054 of 2017

WEB COPY

13. The learned Trial Judge is correct that the comparison of a signature on a disputed document with an after suit document, should normally not be adopted. This is because a party, for the sake of resiling from the said document, can alter the signature and sign in the plaint and other documents in a different manner. It is normally not sent for comparison as the documents have come into force after the dispute has arisen. However, the same logic cannot be applied to left thumb impression of a person. This is because once a thumb impression is frozen, it is not subject to change as long as the person resides in this transitory abode.

14. Furthermore, in this case, the first defendant has not denied the execution and attestation of the “WILL” dated 02.12.1998. He has pleaded vitiated circumstances. The plaintiffs could have taken advantage of the written statement and should have proceeded further. By way of abundant caution, the plaintiffs have filed the application seeking for comparison of the left hand thumb impression found in Ex.A9, “WILL” along with the plaint and vakalat filed in the suit, by the Finger Print Bureau, Police Department, Puducherry.



C.R.P.No.1054 of 2017

WEB COPY

15. If that be the situation, the findings of the learned Trial Judge that the thumb impression will change cannot stand a moment's scrutiny. The execution of Ex.A9, "WILL" not having been denied, I do not find any reason to deny the relief sought for by the petitioners.

16. Accordingly, the order of the learned Principal Subordinate Judge, Puducherry in I.A.No.162 of 2014 in O.S.No.29 of 2016 dated 02.01.2017 is set aside. I.A.No.162 of 2014 will stand allowed.

17. The learned Subordinate Judge is requested to appoint an Advocate Commissioner to take the document under Ex.A9 "WILL" along with the thumb impression of the deceased first plaintiff as found in the indigent original petition, plaint and vakalat of the suit for the purpose of comparing and securing a report from Finger Print Bureau, Police Department, Puducherry. The learned Judge, in addition to the Finger Print Department's report, shall also exercise the powers vested in the court by virtue of Section 73 of the Indian Evidence Act and compare the report along with the learned presiding officer's impression and thereafter, render a verdict.



C.R.P.No.1054 of 2017

WEB COPY

18. Needless to state that the first defendant, in case, disputes the Finger Print Department's report, he is entitled to summon the said expert to the court and cross examine him. The learned judge is request to take note of the fact that the suit had been presented in the year 1999 as indigent original petition and it has been pending before the Court for the past 25 years. On account of the pendency, the original plaintiff had died, her representative had died and the litigation has been carried out by the legal representatives of the legal representative. Time is come for the court to pronounce the judgment. The learned judge shall pronounce the judgment within a period of three months from the date of receipt of a copy of expert's report.

19. With the above directions, this civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

27.11.2024

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Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No



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C.R.P.No.1054 of 2017

To

The Principal Sub Court, Puducherry



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C.R.P.No.1054 of 2017

V.LAKSHMINARAYANAN, J.

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C.R.P.No.1054 of 2017

27.11.2024