



C.R.P. (PD) .No. 3735 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3735 of 2024

&

C.M.P.No. 20308 of 2024

Manikachalamoorthy

...Petitioner

Vs.

1.Thulasiammal

2.Valliammal

...Respondents

Prayer: Petition is filed under Article 227 of the Constitution of India against the order dated 01.07.2024 made in I.A.No.1321 of 2023 in O.S.No.197 of 2023 on the file of the Subordinate Judge, Avinashi.



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For Petitioner : Mr. V.Anandhamoorthy

ORDER

The plaintiff is the civil revision petitioner before this Court.

2. The suit has been filed for a declaration that the “*WILL*” dated 03.09.2021 executed by one Subbaiyan in favour of the plaintiff is true and valid. Subbaian is the father of the plaintiff and the 2nd defendant. The 1st defendant is the mother of the plaintiff and the 2nd defendant and the wife of the said Subbaian. The said Subbaian had purchased the property in the year 2007. Pleading that Subbaian had bequeathed the property in its entirety to the plaintiff, the suit came to be presented.

3. The defendants pleaded that the “*WILL*” is forged and fabricated one. In other words, the “*WILL*” has not been executed by



the said Subbaian. They disputed the thumb impression found in the "WILL". Therefore, they took out an application in I.A.No.1321 of 2023 seeking for an examination of the thumb impression found in the "WILL" dated 03.09.2021 along with an admitted thumb impression of Subbaian in the sale deed dated 23.11.2007 and to get an opinion from the expert in this regard. The said application came to be allowed. Hence, the revision.

4. Heard Mr.V.Anandhamoorthy for the civil revision petitioner.

5. Mr.V.Anandhamoorthy submits that the "WILL" is of the year 2021, whereas the admitted sale deed is of the year 2007 and having been separated by decades, they should not be compared. The second argument in sheet anchor in the case is that the "WILL" cannot be proved by way of comparison of the thumb impression. He adds it is the duty of the propounder to prove the document and that the defendants need not take this as their duty. To this effect, he relied



upon the Judgements of this Court in ***Jothimani Vs. M.Samiyappan - C.R.P.(PD).No.850 of 2017*** and ***Meenambal Vs. Sudha and others - AIR 2023 MAD 150.***

6. I have carefully considered the submissions of the learned counsel and gone through the authorities that he has referred to.

7. Insofar as the submission of the learned counsel that the documents being separated by decades it should not be compared, I am afraid the submission is absolutely untenable. A thumb impression once frozen, does not change as the years go by. Unlike handwriting which is bound to change with age, thumb impression of a person in 2007 is not going to undergo any fundamental change, thereby taking a different form by 2021.

8. Both in the year 2007 as well as the in year 2021,



Mr.Subbaian seems to be a major capable of purchasing a property and bequeathing the same. Therefore, the submission of the learned counsel cannot be accepted.

9. A reading of the Judgements produced by the learned counsel on the face of it seems to be in support of his case, but a careful perusal of the same would show that both the cases relied upon the Judgement of the Kerala High Court in ***R.Saraswathy Vs. Bhavathy Ammal - 1988 (2) KLJ 512***. In that case the issues are *whether the opinion of an expert as to the signature of the testator in the "WILL" would decide the issue? and Whether the "WILL" had been validly executed or not?*. The learned Judge answering those questions had held that an expert cannot be allowed to give opinion, which is essentially a matter of law, for the Courts to decide. The learned Judge however held that an expert can be used for a matter which lies within the range of the peculiar skill and experience of the witness.



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10. In the case of *Thiruvengadam Pillai vs Navaneethammal & another* - 2008 (4) SCC 530, Mr. Justice R.V. Raveendran took a view that under Section 73 of the Indian Evidence Act, a Court has a power to compare the handwriting as well as the finger print and come to a conclusion. The learned Judge, however observed, that prior to exercising power under Section 73 of the Act, it is always advisable for the Court to get an opinion from the expert in the field.

11. By the mere fact that the report of the expert comes before the Court does not mean that the duty of the plaintiff who is the propounder of the "WILL" stand discharged. This duty continues regardless of whether the defendant had took out this application. This is by virtue of Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act. The defendants believe that the opinion of an expert might help them in their litigation. The learned Judge has merely appointed a Commissioner to get report. It is not pleaded by Mr. V. Anandhamoorthy that Forensic Laboratory at Chennai is incompetent to give such opinion.



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12. In the light of the above discussion, I am not inclined to admit the Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The Subordinate Judge,
Avinashi.



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