



C.R.P.(PD).No.3098 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.3098 of 2021
and CMP.No. 21808 of 2021

S.Rajkumar

... Petitioner

vs.

1.J.Sangeetha
2.K.Amarjothi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 27.09.2021 made in I.A.No.225 of 2020 in O.S.No.106 of 2018 on the file of the III Additional District Court, Dharapuram.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondents :Mr.J.Ramakrishnan for R1
Mr.V.R.Prabakaran for R2



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below allowing the application filed by the respondent seeking to send the Will dated 27.08.2015 and consent deed dated 25.02.2017 for comparison of signatures of the testator Seenivasan in the Will and the executant Sangeetha in consent deed with admitted documents produced along with the petition.

2. The first respondent herein filed a suit for partition. The first respondent and petitioner herein are siblings. The suit was resisted by the petitioner by projecting a Will dated 27.08.2015 allegedly executed by Seenivasan father of the parties. The petitioner also relied on a consent deed dated 25.02.2017 allegedly executed by first respondent confirming the terms of the Will.

3. The learned counsel appearing for the petitioner submitted that the Will has to be proved by examining the attesor of the documents



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under Section 68 of Evidence Act and therefore, in order to decide the genuineness of the signature of the testator, it need not be sent for comparison by expert. The learned counsel further submitted that if Will is sent for comparison even before recording evidence of attestor it may cause prejudice to the petitioner at the time of trial.

4. The learned counsel appearing for the respondent by relying on the judgment of the Apex Court in ***Rama Avatar Soni vs. Mahanta Laxmidhar Das and others*** reported in ***(2019) 11 SCC 415*** submitted that there is no bar for sending the Will for expert opinion to find out the genuineness of the signature of the testator found thereon.

5. It is settled law, it is the duty of the propounder of the Will to prove the same by examining the attestor of the documents under Section 68 of Evidence Act. Therefore, the burden of proving Will is very high on the propounder and only in case the propounder discharged the burden, the onus shifts to the other side to disprove the Will. In the case on hand, admittedly, the trial has not yet commenced. Therefore, at this stage, the first



respondent/plaintiff is not entitled to seek comparison of the signature found in the Will, which is not yet proved by the petitioner by examining the attesor. However, it is made clear, it is open to the first respondent to seek comparison of the signature found in the Will after it is being admitted in evidence through the attesor to the documents.

6. In ***Rama Avatar Soni vs. Mahanta Laxmidhar Das and others*** reported in ***(2019) 11 SCC 415***, while considering the question, whether the signature of the testator in the Will can be compared with the admitted signature, the Apex Court observed as follows:

As pointed out earlier, the appellant has filed the suit CS No.2/34 of 2008/2003 challenging the genuineness of alleged Will executed by Natabar Das in favour of the first respondent and seeking revocation of the probate of the will. As submitted by the learned senior counsel appearing for the appellant, in the said suit, issue No.3 has been framed that “Has the defendant No.1 by practising fraud managed to get the Will probated, which was a fabricated and manufactured one?” Hence, the genuineness of the Will in question needs to be decided that is whether the signature in the Will dated 12.03.1989 allegedly executed by Natabar Das could be ascertained only by sending the document to hand-writing expert. As discussed above, earlier in WP(C) No.14997 of 2013, while setting aside the order of the District Judge dated 18.06.2013, the



High Court has observed that the application filed under Order XXVI Rule 10A CPC can be considered at a later stage of the proceedings that is after closure of the evidence from both sides. After their witnesses were examined, the plaintiff/appellant again reiterated the prayer for sending the Will in question to hand-writing expert. If the scientific investigation of the document in question facilitates the ascertaining of truth, in the interest of justice, naturally it has to be ordered. Having regard to the issue raised in the suit, the District Judge was right in allowing the application to send the Will in question dated 12.03.1989 to hand-writing expert.

7. A perusal of the above judgment would make it clear that there is no bar for getting expert opinion regarding the signature of the testator found in the Will in a proper case. However, this Court feels it appropriate not to send the disputed Will out of the custody of the Court. Therefore, in case the petitioner herein marked Will in evidence through the attester, thereafter, it is open to the petitioner to file an appropriate application seeking comparison of the signature found in the Will along with the admitted signature. The same shall be done by sending photocopy of the Will to the expert opinion. In case, the expert finds it difficult to compare the signature in photo copy of the Will with admitted signature, then the expert may be



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permitted to inspect the original in the Court premises and take necessary photocopy and give his opinion. Therefore, the order impugned in the revision is set aside in respect of direction to send the Will dated 27.08.2015 for expert opinion for the present. As far as the document dated 25.02.2017 consent deed is concerned, I do not find anything to interfere with the order passed by the Court below and accordingly the Civil Revision Petition is dismissed in respect of said documents.

8. In view of the discussions made earlier, the above Civil Revision Petition stands allowed as indicated above in respect of Will dated 27.08.2015. No costs. Consequently, the connected miscellaneous petition is closed.

10.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The III Additional District Court,
Dharapuram.



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S.SOUNTHAR, J.

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