



C.R.P. (PD) .No.4761 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4761 of 2024
and C.M.P.No.26653 of 2024

1.Natarajan

2.Prakash

.. Petitioners

Vs.

1.Govindammal

Easwaramurthy (died)

2.Krishnamurthy

3.Sivasamy

4.A.Pappathy

5.Mani

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow this Civil Revision Petition and set aside the fair and decreetal order dated 11.09.2023 passed in I.A.No.177 of 2021 in O.S.No.195 of 2016 on the file of the Subordinate Court, Avinashi.

For Petitioners : Mr.Sachin Vinayak.V



ORDER

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This civil revision petition arises against the order passed by the learned Subordinate Judge at Avinashi, in I.A.No.177 of 2021, in O.S.No.195 of 2016, dated 11.09.2023.

2.By an order dated 11.09.2023, the learned Subordinate Judge, Avinashi, dismissed the application filed by the defendants 1 & 2 seeking to issue summons to the Sub Registrar, Avinashi, to produce the following:

(i)the original and certified copies of the book No.1 (Volume No.867) of Document No.1236/1977.

(ii)the original and certified copy Thumb impression register of one Palani Gounder while registering the above said Partition Deed. In addition to the above, the defendants wanted production of original and certified copies of the book no.1 (Volume No.952) of Document No.211/1984.

(iii)the original and certified copy of Thumb impression register of Palani Gounder while registering the above said Sale Deed. Further, they



wanted the Sub Registrar to produce the original and certified copies of the book no.3 (Volume No.48) of Document No.90/1990 along with original and certified copy of Thumb impression register of Palani Gounder while registering the above said “LAST WILL”.

3.O.S.No.195 of 2016 is a suit for partition and separate possession. The case of the plaintiffs is that the properties were partitioned between one Palani Gounder and Ramana Gounder on 26.08.1977. The plaintiffs, six in number, claim to be the daughters and sons and legal representatives of the pre-deceased son of the Palani Gounder. The 1st defendant is the other son of Palani Gounder, and the 2nd defendant is the 1st defendant's son. On the death of Palani Gounder, the plaintiffs pleaded that they are entitled to a share and therefore, they sought amicable division by way of partition. Since, the defendants were resisting the same, they came forth with the suit.

4.It is the case of the civil revision petitioners / defendants 1 & 2 that the Palani Gounder did not died intestate, but had executed a “WILL” on 05.01.1991, in favour of the 1st defendant. Since, the “WILL” came into force on the death of Palani Gounder, the 1st defendant claimed that he had become



the owner of the property. In that capacity, he executed a settlement deed in favour of the 2nd defendant, on 02.02.2011. On these pleadings, the parties went for trial.

5.During the course of the proceedings, the defendants 1 & 2 filed an application in I.A.No.177 of 2021, invoking Order XVI Rule 1 of the Code of Civil Procedure, 1908, calling upon the Sub Registrar of Avinashi, to appear before the Court. They wanted the production of the documents set forth above. The learned Trial Judge, after receiving a counter from the respondents, dismissed the petition. Hence, the revision.

6.I heard Mr.Sachin Vinayak.V for the civil revision petitioners.

7.Mr.Sachin Vinayak.V, pleads that the aforesaid documents would be required for the purpose of proving that Palani Gounder had executed a “WILL”. Therefore, the order of the learned Trial Judge is erroneous.

8.I have considered the submissions of Mr.Sachin Vinayak.V.



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9.The manner of proof of a “WILL” is given under Section 68 of the Indian Evidence Act, 1872. A “WILL” is a document which requires to be attested in terms of the Indian Succession Act, 1925. The proof of a document which requires by law to be attested has to through the examination of atleast one attesting witness to the said document. This is the mandate of Section 68 of the Indian Evidence Act, 1872. In case, an attesting witness is not available, then, a person propounding the “WILL” can always resort to Section 69 to 71 of the Indian Evidence Act, 1872. No where, the Indian Evidence Act, 1872, contemplates the proof of a “WILL” by way of examination of Sub Registrar or his records. It is the defendants are propounding the “WILL” and they have to prove the “WILL” in terms of Sections 68 to 71 of the Indian Evidence Act, 1872.

10.Mr.Sachin Vinayak.V, pleads that the plaintiffs have taken a plea that Palani Gounder was not on a sound mental condition when he executed the “WILL” and hence, they require the Thumb Impression of Palani Gounder to be produced before the Court. Even if a person of an unsound mind, I am sure he will have fingerprints. Whether the “WILL” had been duly executed



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cannot be inferred from the examination of the Thumb Print Book maintained by the Sub Registrar. Leaving it open to the defendants 1 & 2 to prove the “WILL” in the manner known to law, this revision is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

26.11.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Subordinate Court,
Avinashi.



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V.LAKSHMINARAYANAN, J.

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