



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 01.08.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.Nos.2256 and 3034 of 2024

and

C.M.P.Nos.11892 of 2024

R.Thangammal

... Petitioner in both CRPs

Vs.

R.Periyammal (deceased)

R.Kandasamy (deceased)

1. M.Venkatachalam

2. M.Shanmugham

3. M.Malarkodi

4. R.Muthukali

K.Periyagoundar

5.Duraisamy

6. Periyammal @ Saroja

7. Parimala

8. Rasammal

9. Mani @ Saroja

10. K Manickam

11. Uma @ Uma Maheswari

12. Praba

... Respondents in both CRPs

COMMON PRAYER: Civil Revision Petitions have been filed under Article 227 of Constitution of India, 1950, praying to set aside the docket order dated 28.11.2023 in un numbered I.A.SR.Nos.2823 & 2822 of 2023 in O.S.No.238 of 2010 on the file of the II Additional District Judge at Salem.



WEB COPY

For Petitioner : Mr. V. Sekar
in both CRPs

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the docket order dated 28.11.2023 in unnumbered I.A.SR.Nos.2823 & 2822 of 2023 in O.S.No.238 of 2010 on the file of the II Additional District Judge at Salem.

2. The petitioner, as plaintiff, had filed I.A.SR.No.2823 of 2023 in O.S.No.238 of 2010, which was not even numbered and the same was rejected. Likewise she filed I.A.No.2822 of 2023 in O.S.No.238 of 2010 and the same was not even numbered but was rejected.

3. The contention of the petitioner is that I.A.SR.No.2823 of 20223 was filed by her seeking to send the admitted documents such as the Test report dated 16.07.1968 and the disputed document namely the Will dated 23.08.2011 to Handwriting Expert directing him to compare the signatures and send a report as to whether the signature in the Will and the one available in the test report dated 16.07.1968 are one and the same or in variance. I.A.SR.No.2822 of 2023 was filed to appoint a Commissioner to take the admitted and disputed signatures to the Expert for Opinion.



4. The learned counsel for the petitioner submitted that both IAs are filed based on the directions given by this Court in CRP.(PD).No.489 of 2014, which the petitioner has filed against the order in I.A.No.326 of 2011 in O.S.No.238 of 2010 seeking to send and compare the admitted signature of his father and the same also dismissed. Against which, the petitioner filed CRP.(PD).No.489 of 2014 and this Court by order dated 13.02.2019 had held as follows:

"8. The learned counsel for the second respondent submitted that there is no point in sending the document that allegedly bears the signature of the petitioner and the respondents' father of the year 1968, for comparison as the signature would vary. Therefore the lower court dismissed the application with the following observations:

" Moreover the signature found in the Test Report is not admitted by the respondent as the admitted signature and this court holds that the court can send only the admitted signature and the disputed signature for favourable comparison of the opinion of the experts and the signature which the petitioner sought for comparison is of the year 1968 whereas the signature in the disputed Will is of the year 2004 and the same was contended by the respondent that the document sought for comparison by the petitioner could not be taken as an admitted signature. The sending of the signature found in the Test Report dated 16.07.1968 will serve no useful purpose since the signature found in the Test Report was signed by the petitioner's father long back as the signature which was signed by the petitioner's father long back will serve no useful purpose."

9. The above reasoning is not convincing. If there is

variation in the signature in the Test Report of the year 1968 and



that of the unregistered Will dated 08.07.2004 produced by the respondents, it is for the respondents to produce other documents to substantiate that the signature in the will was genuine and that it was not a fabricated will.

10. It would be unfair not to allow the petitioner / plaintiff to produce the said documents which are admittedly ante litem motem signature of the testator prior to the execution of the Will.

11. Therefore, to shut out such documents at the preliminary stage without proper examination is not proper. Prime facie petitioner is entitled to produce documents which will aid in arriving at the truth. Therefore, the Court ought to have issued a Certificate under Section 76 of the Civil Rules of practice to the petitioner. The present revision therefore deserves to be allowed as prayed for.

12. The Court below shall direct the Tamil Nadu State Electricity Board to furnish the particulars of Test Report dated 16.07.1968 bearing the signature of K.Rannasamy Gounder in Form - A and Form - C within a period of three months from the date of receipt of a copy of this order."

5. In view of the same, the above two I.A.s filed. He further submitted that despite the order of this Court and specific direction given in CRP.No.489 of 2014 to send the Test report dated 16.07.1968 and the Will dated 08.07.2004 both are in the custody of the Trial Court to subject it for examination, it was not done. In the impugned order dated 28.11.2023, the

<https://www.mhc.tn.gov.in/judicial> Trial Court has referred to Section 63 of the Succession Act and Section 68 to



70 of the Indian Evidence Act to dismiss the applications, which is in contravention to the direction of this Court

6. Considering the above facts and circumstances, this Court is of the view that rejection of I.A.SR.Nos.2823 & 2822 of 2023 are not sustainable. The Trial Court is directed to number both I.As and consider the directions given by this Court in CRP.No.489 of 2014 dated 13.02.2019 and appropriate orders have to be passed in the light of the order in CRP.No.489 of 2014, within a period of 30 days from the date of receipt of a copy of this order.

7. With the above directions, these Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2024

Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order
Neutral Citation : Yes/No

av



M.NIRMAL KUMAR, J.

av

To

The learned II Additional District Judge,
Salem.

C.R.P.Nos.2256 and 3034 of 2024
and
C.M.P.Nos.11892 of 2024

01.08.2024