



C.R.P(MD)No.1747 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.1747 of 2011

and

M.P(MD)No.1 of 2011

Thayammal(died)

2.A.Radhakrishnan

... Petitioners

vs.

... Respondents

1.Shunmugam Pillai

Ramalakshmi(died)

2.Vijayalakshmi

3.Shanthi

4.Pappa @ Packialakshmi

5.Krishnaveni

6.N.S.Krishnan

7.Arumugam Pillai

8.Kayathri

... Respondents/Respondents/Defendants

9.A.Ramanathan

10.T.A.Rajalakshmi

11.Indira

12.Ananthi

(2nd petitioner and respondents 9 to 12 are brought on record as Lrs. of the deceased sole petitioner vide Court order dated



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09.11.2023 made in C.M.P(MD)No.1154 of 2022
in CRP(MD)N.1747 of 2011 by DEVJ)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.4 of 2011 in R.C.O.P.No.9 of 2001, dated 20.06.2011 on the file of the Principal District Munsif Court, Nagercoil.

For Petitioner : Mr.R.T.Arivukumar

For R6 & R7 : Mr.D.Nallathambi

ORDER

The instant Civil Revision Petition has been filed at the instance of the petitioner, who is a plaintiff in O.S.No.67 of 2001 on the file of the learned District Munsif at Nagercoil, challenging the fair and decreetal order passed in I.A.No.4 of 2011 in R.C.O.P.No.9 of 2001, dated 20.06.2011 on the file of the Principal District Munsif Court, Nagercoil.

2. Brief facts of the case are as follows:

(i) The very application in I.A.No.4 of 2011, has been filed under Order 26 Rule 10-A & Section 151 of C.P.C., and Section 45 of the



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Indian Evidence Act, 1872. It appears that the second respondent executed a sale deed in favour of the plaintiff which later than was disputed by her. Hence, the petitioner has come forward with an application to send the Ex.A1-sale deed which was said to have been executed by the second defendant/respondent in favour of the plaintiff to compare the signature and thump impression made in the vakalat and counter affidavit filed in R.C.O.P.No.9 of 2001, to a Handwriting Expert for the comparison of the signature. The said application was resisted by the respondents/defendants. However, the said application was allowed.

(ii) While sending the document to the Handwriting Expert, the Expert has returned the document sought to be compared with a note that the same has to be sent along with contemporary documents, which is of the period within five years. Thereafter, the petitioner has moved the present application to send the documents to a private Handwriting Expert. The learned trial Judge while dismissing the application has observed as follows:

“The learned Advocate Commissioner had filed his report stating that after perusing all the documents, the Assistant Director, Forensic Science Department, Chennai,



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returned those documents in a sealed cover with a covering letter dated 10.08.2005 and had informed him that the year difference between one document containing the disputed signature and the other comparing documents are more than five years and so they could not be able to compare the signature as per the order of this Court.”

3. It is pertinent to mention here that when a document sought to be sent before an Expert, it is mandatory on the part of the petitioner to mention the admitted documents, which is of the contemporary period. Only upon the ground that no contemporary document of the relevant period was sent, the Expert was not in a position to give a report. Therefore, the petitioner now cannot take advantage of their own fault of not sending the contemporary documents and cannot attempt to move an application to send the disputed document once again for comparison before a private Handwriting Expert.

4. The trial Judge by referring to a decision in ***S.Chinnathai vs. K.C.Chinnadurai*** reported in ***2010-1-L.W.646***, has dismissed the application on the ground that the Expert’s opinion cannot be obtained from private Handwriting Experts.



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5. This Court could not find any infirmity in the order passed by the learned trial Judge. Hence, the instant Civil Revision Petition is dismissed. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

6. Considering the long pendency of the suit, the learned District Munsif, Nagercoil, is directed to dispose of the suit in O.S.No.67 of 2001, within a period of three months from the date of receipt of a copy of this order.

05.02.2024

Index:Yes/No

NCC:Yes/No

PM

To

- 1.The Principal District Munsif Court,
Nagercoil.
- 2.The District Munsif,
Nagercoil.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN, J.

PM

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