



CRP(MD)No.1163 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.11.2024

Delivered on : 06.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRP(MD)No.1163 of 2019

and

CMP(MD)Nos.6275 of 2019 & 16341 of 2024

1.G.Dhakshinamoorthy
2.M.Govindaraj
3.Krishnanantha Swamy
4.P.Manikandan
5.AR.Vedachalam

... Petitioners/Petitioners/Defendants

vs.

Thavathiru Sadhu Shanmuga Adigalar
Madaathipathi Palani Aathinam,
Thavathiru Sadhu Swamigal Thirumadam,
Palani.

... Respondent/Respondent/Plaintiff

PRAYER : Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 25.03.2019 passed in I.A.No.549 of 2018 in O.S.No.110 of 2014 on the file of the I Additional District Court (PCR) Tiruchirappalli and to allow this Civil Revision Petition.



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For Petitioners
Nos.1,3 & 4 : M/s.J.Maria Roseline
For Petitioners
Nos.2 & 5 : Mr.G.Sridharan
For Respondent : Mr.M.Muthu Geethayan

ORDER

Challenging the order dated 25.03.2019 made in I.A.No.549 of 2018 in O.S.No.110 of 2014 passed by the I Additional District Court (PCR), Tiruchirappalli, the present Civil Revision Petition is filed by the petitioners, who are the defendants in the suit.

2. The brief facts of the case is that:-

The respondent/plaintiff filed a suit for recovery claiming right over the suit property based on the unregistered Will, which is said to have been executed by Thavathiru Kumarananda Swamigal in favour of the plaintiff on 15.03.2013, which was marked as Ex.A2. The said Ex.A2 which is a Will though not unregistered, the plaintiff claims that testator executed the registered Will in favour of him.

3. Per contra, the petitioners/defendants contends that they are having a registered Will dated 14.02.2013, which was marked as Ex.B2. The defendants



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had filed an application in I.A.No.549 of 2018 before the I Additional District Court, (PCR) Tiruchirappalli for a direction to send the unregistered Will dated 15.03.2013-Ex.A2, which is in favour of the respondent/plaintiff, to compare the signature of the Thavathiru Kumaranandha Swamigal along with the documents namely Ex.B2.

4. The trial Court taking note of the fact that Will dated 14.02.2013 could not have been affixed by the testator Thavathiru Kumaranandha Swamigal and held that the testator being aged about 80 years could not have affixed the signature properly and due to his ill health and with shivering hands. The testator has not recovered from ailment and after the ailment the testator had died on 20.03.2013. The trial Court, by noting the date of the registered Will dated 14.02.2013 which was registered on 11.03.2013 and the death of the testator on 20.03.2013 the trial Court came to the conclusion that the signature found in the above Will, dated 14.02.2013 will not be a genuine one. On the other hand, the plaintiff would contend that the unregistered Will, dated 02.04.1997 was written by the testator and a power deed was executed in the name of the respondent/plaintiff. The trial Court by taking note of the signature in the Will dated 02.04.1997 and 15.03.2013 held that the signatures found to be true and



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dismissed the application filed by the defendants to send the documents for forensic lab to compare the signature.

5. Aggrieved against the order of dismissal, the petitioners/defendants, who are the defendants in the suit, filed the present Civil Revision Petition.

6. The Will is required to be proved as per Section 63 of Indian Succession Act and Sections 68 to 71 of the Indian Evidence Act. The propounder of the Will owe the duty to establish the genuineness of the Will in question as provided under Section 63 of the Indian Succession and Sections 68 to 71 of the Indian Evidence Act. When the will is registered, it is presumed that Section 68 and 69 of the Indian Evidence Act and Section 58 of the Indian Succession Act is to be complied with.

7. Per contra, the learned counsel for respondent/plaintiff would contend that it is not only the unregistered Will in favour of the plaintiff. The plaintiff is Thavathiru Sadhu Shanmuga Adigalar, Madathipathi, Palani Aathinam, Thavathiru Sadhu Swamigal Thirumadam, Palani. The petitioners/defendants filed an I.A.No.2 of 2019 to receive the additional written statement. The said



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application was rejected by the trial Court. Challenging the same, the defendants filed C.R.P(MD)No.78 of 2022. This Court by an order dated 04.07.2024 dismissed the Civil Revision Petition. The relevant portion of the order is extracted hereunder:-

"Thus, it can be seen that the statement made in the additional written statement that Ex.A10 and Ex.A11 were filed as new documents by the plaintiffs are not entirely correct inasmuch as Ex.A10 is produced even along with the plaint. Therefore, it was for the defendants to inspect the documents before filing of the written statement itself. In the said backdrop, the defendants chosen to take a specific plea in the written statement that the signature is not that of the testator and the Will is concocted.

10. Both pleadings that the signature is forged and that some other signature is misused cannot be there. The additional written statement is different from amendment of pleadings. In that view of the matter, when the Trial Court has framed the issues and the trial has proceeded with, now belatedly they are diametrically opposite and contradictory stand cannot be taken by the defendant by filing an additional written statement. Therefore 7/9 <https://www.mhc.tn.gov.in/judis> C.R.P. (MD) No. 78 of 2022 altering the plea, at this belated stage cannot be permitted and finding no merits, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs."



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8. If the amendment is allowed as prayed in the interlocutory application, the character and the nature of the suit itself will be defeated and objection made by the respondent/plaintiff was accepted and it has become final. The said order was not challenged by the defendants before the Apex Court.

9. The learned counsel for the petitioners/defendants relied upon the order in C.R.P(PD)No.850 of 2017. The relevant portion of the order is extracted hereunder:-

"In the above judgment, this Court held that the propounder of the Will owe the duty to establish the genuineness of the Will in question as provided under Section 63 of the Indian Succession Act and Sections 68 to 71 of the Indian Evidence Act. it is found that the opinion of the expert as such may not tilt the scales in arriving at that conclusion as to the authenticity of the Will in question. The experts opinion of the Will may not loom large in determining the issues involved between the parties as regards the proof of the Will in question. Therefore, the expert opinion for the disputed signature in the Will dated 10.09.2000 is not required and it is useful to prove the same as per the law under Succession Act as well Indian Evidence Act. Therefore, the judgment relied upon by the learned counsel appearing for the respondents is not helpful to the case on hand.



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Therefore, the order passed by the trial Court is perverse and liable to be set aside."

10. Thus it is clear that Section 63 of the Indian Succession Act and Sections 68 to 71 of the Indian Evidence Act is essential and necessary ingredient for test to prove the Will. The learned counsel for the petitioners/defendants further relied on the order passed by this Court in C.R.P(MD)No.601 of 2021, dated 07.10.2021. The learned counsel for the petitioners/defendants by taking note that the defendants while making the application for sending the documents for comparison of signature has also been pleaded that age of the signature and age of ink. This Court by an order dated 07.10.2021 has given a following findings:-

"9.The defendant has, thereafter filed the above petition in I.A.No.100 of 2020, under Section 73 of Indian Evidence Act and Order 26 Rules 9 and 10 of C.P.C, for appointment of the Advocate Commissioner to take the suit promissory note to the Forensic Science Department, Madurai, to find out age of the writings, such as the names of the plaintiff and defendant, amount, interest and the signature found therein and to get an expert report.

12.The main contention of the revision petitioner/plaintiff is



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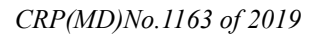
that this Court had been repeatedly held that age of the ink in the disputed document and the probable time at which age the writing had been made or signature had been afixed, cannot be verified by any forensic expert or hand writing expert and that there is no such facility available in the entire India to find out the age of hand writing or signature found in a document. "

14. Considering the above, it is very much clear that as of now, there is no mechanism or scientific method to find out the age of the writing or ink. But the learned Additional District Judge, without considering the non-availability of any such mechanism, by simply observing that the defendant has to be given an opportunity to prove his defence and no prejudice would be caused to the plaintiff, allowed the petition. Hence, this Court has no hesitation to hold that the impugned order is not good in law and the same is liable to be set aside.

11. In the above case, this Court has given a categorical finding that there is no mechanism or scientific method to find out the age of the writing or ink.

12. Heard the learned counsel appearing on either and perused the materials available on record.

13. Admittedly, the petitioners/defendants had made this application when



11. Accordingly, the order passed in I.A.No.549 of 2018 needs no interference and therefore, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.12.2024

NCC : No
Index : No
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To

The I Additional District Court (PCR),
Tiruchirappalli.



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N.SENTHILKUMAR,J.

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Pre-Delivery Order Made In
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DATED : 06.12.2024