



C.R.P. (MD) No. 78 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 78 of 2022
and
CMP (MD) No. 400 of 2022

1.G.Dhakshinamoorthy
2.M.Govindaraj (Died)
3.Krishnanantha Swamy
4.P.Manikandan
5.A.R.Vedachalam (Died)

... Petitioners/
Defendants

-VS-

Thavathiru Sadhu Shanmuga Adigalar
Madathipathi, Palani Aathinam,
Thathiru Sadhu Swamigal Thirumadam,
Palani.

... Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 12.09.2019 passed in I.A.No.2 of 2019 in O.S.No.110 of 2014 on the file of the I Additional District Court (PCR), Thiruchirappalli.



For Petitioners : Ms.J.Maria Roselin
For Respondent : Mr.M.Muthu Geethaiyan

ORDER

This Civil Revision Petition is filed challenging the fair and decreetal order of the learned First Additional District Judge Tiruchirappalli, dated 12.09.2019 made in I.A.No.2 of 2019 in O.S.No.110 of 2014. By they said the interlocutory application, the petitioners, who are the defendants 1 to 5 in the suit, had made a prayer to receive the additional written statement which is rejected by the trial court. Aggrieved by which, the present revision petition is filed.

2. While taking up the matter for arguments, at the outset it is represented by the learned Counsel for the petitioner that the second petitioner and the fifth petitioner have since died pending the civil revision petition. However, the claim is made as the Trustees of the Trust and therefore, there is no any surviving interest for the legal heirs to be impleaded and the rest of the Trustees will take care of the matter. It is also submitted that no other Trustees have also been appointed in their place. The said submissions are recorded.



3. The learned counsel for the petitioner would submit that firstly, while filing the written statement, the petitioners have taken a plea that the signature contained in the second Will dated 15.03.2013 was not that of the testator. However, when the plaintiff marked Ex-A10 and A11, i.e., the said Will and also the Power of Attorney based on the said Will. Upon seeing the original only, they came to know that actually it is the signature of the deceased testator. However, it is obtained in the year 1997 in blank papers and the same is now being misused. Once they realized the same, they wanted to prove the same. Therefore, they filed an interlocutory application for comparing both the documents for proving the age of the signature, the said application was also dismissed on the ground that they have not taken a specific plea in the written statement. Under these circumstances, the present application is filed.

4. Learned Counsel would submit that the Trial Court ought to have seen that only because the original was not produced along with the plaint, there was no occasion for the defendant to have witnessed Ex-A10. As far as Ex-A11 is concerned, the document itself was introduced only during the trial and not in the pleadings. In view thereof, the additional written statement ought to have been received by the Trial Court.



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5. Learned Counsel for the petitioner would also rely upon the judgment of this Court in ***Subbaiah & another v. Velu @ Velappan***, reported in **2016 (1) LW 862**, for the preposition that filing of the additional written statement cannot be denied merely for the fact that trial has commenced.

6. Per Contra, the learned counsel appearing on behalf of the respondent would submit that as far as the Will is concerned, the same is produced as a document along with the plaint and it is also specifically pleaded that the testator has only executed the Will. The defendant denied the signature and accordingly, as per the case, issues have been framed and parties went into Trial. When the plaintiff's side defense is over, now the defendants cannot alter their very stand only because they were not able to establish in the trial that the signature is not that of the testator. He would further submit that even the civil revision petition filed by the petitioners as against the dismissal order of comparing the documents is also dismissed vide order dated 07.03.2024 in C.R.P (MD) No.1163 of 2019. The case is now in the defendants' evidence stage. The D.W.1 proof affidavit has already been filed. Only to drag on the proceedings, the present Civil Revision petition is filed.



7. Further, learned Counsel would rely upon the judgment in ***M.Devi and another v. D.Soodamani and others***, reported in **2019 (5) LW 547**, to contend that completely new case cannot be permitted to be introduced in the additional written statement after the commencement of trial.

8. I have considered the said submissions made on either side and perused the material records of the case.

9. Firstly, it is essential to extract the contents of the additional written statement which is now sought to be filed. The relevant paragraphs 5 and 6 are extracted hereunder:-

“5. It is humbly submitted that the plaintiff was examined as Pwl and at the time of filing his proof affidavit he filed a petition to receive some additional documents. The petition was allowed the documents were received and exhibits were marked. For the first time the plaintiff filed some new documents including Ex.A10 and Ex.A11 stating that the above said Thavathiru Kundrimani Swamigal executed a general power of attorney in favour of the plaintiff on 02.04.1997 which has been marked as Ex.A11. For the first time the plaintiff has taken such a new plea and filed that document into the court. After verifying the copy of those above



said documents it is reveal that the signature in the Ex.A2 of Thavathiru Kumarananda Swamigal is identical to the signatures in Ex A-10, A-11 of Thavathiru Kumarananda Swamigal and it is given to understand that the plaintiff obtained signature from Thavathiru Kumarananda Swamigal in a blank paper at the time of execution of Ex A10 & Ex.A11 and utilized the same and created the forged, fabricated and concocted will i.e., Ex A2 for the purpose of this suit as if Thavathiru Kumarananda Swamigal executed the Will. As stated above, Thavathiru Kumarananda Swamigal is not well at the period of executing Ex.A2 and Ex.A2. Even at the cross examination of P.W.1 on our side we have put a suggestion that the plaintiff had misused the blank signed paper of Thavathiru Kumarananda Swamigal and created the forged will i.e., Ex B2.

6. It is evident from Ex.B-2 (the earlier will dated 14.02.2013) that Thavathiru Kumarananda Swamigal could not put his signature properly due to his ill health and shivering. Further the above said will dated 14.02.2013 was registered on 11.03.2013 (ie. four days before the alleged Ex-A2 Will dated 15.03.2013) at that time Thavathiru Kumarananda Swamigal's health condition was worst and he could not put his signature properly at the back side of page No.1 of the will dated 14.02.2013.



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At the time of execution of the above said will Thavathiru Kumarananda Swamigal was 80yrs old. After the execution and registration of the Ex-B2 Will which was also admitted by the plaintiff, the said Thavathiru Kumarananda Swamigal did not recovered from ailment and died on 20.3.2013. Hence from the above said facts it is very clear that the Ex-A2 Will dated 15.03.2013 is concocted, fabricated by the plaintiff.”

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



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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.

04.07.2024

NCC : No
PKN

To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

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