



CMP(MD). No.13321 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

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Tuesday, the Twenty Second day of October Two Thousand Twenty Four

PRESENT

The Hon`ble Mrs.Justice V.BHAVANI SUBBAROYAN

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in

S.A.(MD).No.434 of 2006

Pushpavalli (Died),

2) Lalitha (Died)

3) Arunganapathi

4) Pradeep

5) Prasna

... Petitioners 3 to 5

(L.Rs of the deceased 2nd Appellant)

Vs

1 Saroja (Died),

2 Amirthajothi

..Respondents 1 &2/ Respondents 1 &2

3 Maheswari

4 Siva Balan

5 Seetha

6 Parameswaran

... Respondents 3 to 6

(L.Rs of the deceased 1st Respondent)

Prayer

Petition filed under section 45 of the Indian Evidence Act 1872 Sec.39 of BSA

Praying this Court to send Ex.A21 unregistered will dated 23.06.1997 to the handwriting expert to be compared with the admitted signature found place in the registered documents Ex.A13 Sale deed dated 13.05.1997 executed by Chidambara

Thevar in favour of Pasupathi ammal and thus render justice.

<https://www.mhc.tn.gov.in/judis>



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Prayer in SA(MD). 434/ 2006 :

Second Appeal is filed under section 100 of C.P.C against the judgment and decree dated 30.09.2005 and made in A.S.No.45 of 2004 on the file of the Subordinate Judge, Pattukottai reversing the judgment and decree dated 09.07.2004 made in O.S.No.71 of 2000 on the file of the District Munsif Court Pattukottai.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and affidavit and upon hearing the arguments of Thiru.R.Nandakumar, Advocate for the Petitioner this Court made the following order:

This petition is filed to send Ex.A.21-unregistered will dated 23.06.1997 to the handwriting expert to be compared with the admitted signature found place in the registered document Ex.A.13-sale deed, dated 13.05.1997 executed by Chidambara Thevar in favour of Pasupathi Ammal.

2.According to the petitioners herein, the deceased first appellant is their maternal grandmother and the second appellant is their mother and the respondents 1 and 2 are their aunties. The deceased first respondent in the above Second Appeal had filed a suit in O.S.No.71 of 2000 through her power agent-Gnanasekaran on the



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file of the District Munsif Court, Pattukottai, seeking for the relief of declaration and injunction as against the appellants herein and the second respondent herein. The second defendant/second respondent herein was set exparte in the above suit and after contest, the suit was dismissed on 09.07.2004. Aggrieved over the same, the plaintiff/first respondent has preferred the first appeal in A.S.No.45 of 2004 on the file of the Sub Court, Pattukottai. The Appellate Court allowed the appeal on 30.09.2005 setting aside the Judgment and Decree dated 09.07.2004 passed in O.S.No.71 of 2000 on the file of the District Munsif Court, Pattukottai. Aggrieved over the same, the deceased appellants 1 and 2 preferred the Second Appeal.

3. According to the petitioners herein, their aunt-the plaintiff Saroja got married to one Srinivasa Thevar and settled at Singapore and their mother was not given in marriage. At this juncture, their grandfather executed a registered Will on 20.07.1982 under registered Document No.14 of 1982 in favour of their aunt Saroja/Plaintiff's two minor sons relating to six items of properties. Thereafter, their mother got married and had three children viz., the appellants 3 to 5. Since their aunt Saroja was settled at Singapore and their maternal grand parents have no male issues, the petitioners mother had been taking care of all the needs of their maternal grandparents. While so, their maternal grandfather Chidambara Thevar executed a



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Will on 22.10.1991 in favour of the petitioners 3 and 4/appellants 3 and 4 totalling 2 acres 31-2/3 cents of Thanjavur District, Pattukkottai Taluk, Anaikkadu Village. The petitioners maternal grandfather Chidambara Thevar, who was aged about 70 years, had executed the Will on 22.10.1991, which was registered in the Joint Sub Registrar Office, Pattukkottai in Document No.21 of 1991. The Will was executed with his full consent.

4.According to the petitioner, the said Will was not marked before the Trial Court. While so, their aunt-plaintiff/Saroja has created a forged Will as if their grandfather Chidambara Thevar executed a Will in favour of their aunt-plaintiff/Saroja and in favour of their mother Lalitha-second appellant. In the Will, it was stated that the earlier Will executed in favour of the petitioners 3 and 4 were cancelled through an advocate notice dated 02.08.1993 and in the alleged Will, dated 23.06.1997, all the properties were given to the aunt-plaintiff/Saroja totalling 3 acres 16 cents of Thanjavur District, Pattukkottai Taluk, Anaikkadu Village, whereas the petitioners mother-Lalitha/second appellant has been given only two properties totalling 55 cents.

5.According to the petitioners, the above unregistered Will is a fraudulent and

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created one and just one month before the execution of the abovesaid alleged Will dated 23.06.1997, their grandfather Chidambara Thevar executed a registered sale deed in favour of one Pasupathi Ammal on 13.05.1997 (Ex.A.13). The signature found place in the sale deed, dated 13.05.1997 (EX.A.13) and the signature found place in the alleged unregistered Will executed by their maternal grandfather Chidambara Thevar dated 23.06.1997 are totally different. Any person with naked eye can come to a conclusion that the alleged unregistered Will, dated 23.06.1997 is the forged one. Hence, the petitioners seeks intervention to look into the aspect that there is variation in the signature which has not been considered by the trial Court as well as the Appellate Court and prayed for allowing this petition.

6.Inspite of sending notice, the respondents have not appeared before this Court and according to the learned counsel appearing for the petitioners, the same can be looked into by this Court.

7.Heard the learned counsel appearing for the petitioners.

8.On going through the said documents, viz., Ex.A.13 and Ex.A.21, it could be seen that the signature of Chidambara Thevar is different in both the documents and

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the same can be verified by handwriting expert whether it is a genuine or not.

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Hence, this Court finds it appropriate to appoint an Advocate Commissioner to send the same to the handwriting expert for comparing the signature and to get the report from the Forensic Department and file a report before this Court.

9. Accordingly, Ms.V.Janaki Devi, Advocate [M.S.No.1691/2021, No.72, Lawyers Chamber, Madurai Bench of Madras High Court, Madurai, Mobile No.84284 29218], is appointed as an Advocate Commissioner to receive the original documents, viz., Ex.A.13 and Ex.A.21 and the Advocate Commissioner shall send the same to the Institute of Forensic and Sciences, Madurai for comparison of the signatures of the said Chidambara Thevar.

10. A remuneration of Rs.10,000/- (Rupees Ten Thousand Only) shall be paid by the petitioners/appellants for the said assignment and costs incurred by the Advocate Commissioner.

11. Report to be obtained within a period of four weeks from the date of issuance of this order and filed with the Registry of this Court after service upon the parties.



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12.Post the matter on **19.11.2024**.

// True Copy //

Sd/-

Assistant Registrar (Records)

23 /10/2024

Sub Assistant Registrar
(CS- I, II, III, IV)

Ps

To.

1. The Subordinate Judge, Pattukottai
- 2.The District Munsif, Pattukottai.

Copy to :

- 1.M/s.V.JANAKI DEVI
Advocate (M.S.No.1691/2021,
No.72,Lawyers Chamber,
Madurai Bench of Madras High Court,
Madurai, Mobile No 84284 29218
2. The Section Officer,
Judicial Posting,
Madurai Bench of Madras High Court, Madurai.
3. The Section Officer,V.R.Section ,
Madurai Bench of Madras High Court, Madurai. (2 Copies)



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ORDER DATED : 22/10/2024

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ORDER

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CMP(MD). No.13321 of 2024

in

S.A.(MD).No.434 of 2006

**Giving Direction
as stated within.**

RD(23.10.2024) 8P / 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.