



CRP No.2468 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :23.06.2025

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CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

C.R.P.No.595 of 2025 and CMP No.3356 of 2025

D.Vincent Royan (died)

D.Sengol Royan (died)

1.D.Irudaya Royan

2.D.Josphin Rani

3.A.Bernath Noel

4.A.Anitha Mary

5.A.Sunitha Amali

6.Minor A.Deepa Mary Grazy

(by N.F.Mother Bernath Noel)

All are represented by their power of attorney

Agent D.Irudaya Royan

.... Petitioners

VS

D.Rejna Mary (died)

1.D.Jayarani

2.A.George Williams

3.Amalanathan

4.D.Mary

5.V.Lourdha

6.V.Jayasheeba

7.I.Reeta

8.S.Mariya Anand Royan

9.S,Mariya Jeneet Anisa

... Respondents

Revision filed under Article 227 of the Constitution of India seeking to set aside the fair and decretal order dated 19.08.2024 made in I.A.No.7 of 2024



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in O.S.No.3 of 2011 filed by the respondents as under Section 45 and Section 73 of Indian Evidence Act and under Order 26 Rule 10-A of Civil Procedure Code.

For Petitioners	: Mr.J.Pradeep
For Respondents	: Mrs.C.Jayachitra For Mr.T.S.Baskaran For R.1 to R.3

ORDER

The petitioners are the plaintiffs in a suit for partition. Aggrieved by the dismissal of the application filed under Section 45 of the Indian Evidence Act, refusing to permit the petitioners to have the signature in the disputed Will being compared with the mortgage deed dated 03.05.1999, the petitioners/plaintiffs are before this Court.

2. Heard the learned counsel for the petitioners/plaintiffs and the learned counsel for the respondents 1 to 3.

3. It is seen that even when a connected matter came to this Court, the Hon'ble Division Bench of this Court in common judgment in A.S.Nos.949 and 950 of 2014 dated 14.10.2022, referring to the said disputed Will, held that the defendants, who have relied on the Will, have to prove the same and in the absence of the Will, the plaintiffs would be entitled to partition.



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4. Admittedly, the Will is yet to be marked in evidence. In fact, learned counsel for the respondents has stated that only the signatures in the Will have been marked and in fact, P.W.1 has admitted the signatures therein.

5. The learned trial Judge, however, dismissed the application on the ground that there is no pleading in the plaint with regard to the alleged Will. Such a finding rendered by the trial Court has to be necessarily set aside since the case of the plaintiffs is that the father died intestate and therefore, the trial Court cannot expect the plaintiffs to plead about the Will which is the defence that has been set up by the defendants in the written statement. However, at the same time, as contended by the learned counsel for the respondents, even when the Will is not yet marked, the question of seeking expert opinion does not arise. Further, the Hon'ble Division Bench has also directed the defendants to establish the truth and genuineness of the Will. The defendants have to examine the attesting witnesses to establish the truth and genuineness of the Will in view of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act. The petitioners/plaintiffs would have ample opportunity to test the veracity of the Will during cross examination of the attesting witnesses.



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P.B.BALAJI.,J.

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6. Therefore, at this juncture, the application is certainly pre-mature and therefore, the decision arrived at by the trial Court not permitting to compare the signatures in the Will with the mortgage deed does not require any interference.

7. However, it is made clear that if the Court feels that the signatures would have to be compared after examination of the attesting witnesses, then, it is open to the trial Court to seek the assistance of an expert opinion, if necessary, suo-motu on application being taken out by the plaintiffs.

8. With the above observation, the Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

23.06.2025

Index: Yes/No

Website:yes/no

Speaking Order/Non-speaking Order

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ToThe Additional District Court, Krishnagiri

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