



CRP.No.983 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 07.07.2025

Order pronounced on : 28.07.2025

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

CRP.No.983 of 2025
& CMP.No.5614 of 2025

Indira

..Petitioner

Vs.

1.Kavitha
2.Kumaresan
3.D.Parthiban
4.Kalavathi @ Kala
5.Rani
6.Vanaja
7.T.Marimuthu

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order made in I.A.No.7 of 2024 in O.s.No.142 of 2021 dated 08.01.2025 on the file of the Additional Subordinate Judge, Krishnagiri.

For Petitioner : Mr.KMC.Arunkumar

For Respondents : Mr.V.Anil Kumar for RR1 to 5 & 7
R6 - Died



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ORDER

The plaintiff in O.S.No.142 of 2021, aggrieved by the order dismissing her application in I.A.No.7 of 2024, has come up by way of this revision.

2.Heard Mr.KMC.Arunkumar, learned counsel for the petitioner and Mr.V.Anil Kumar, learned counsel for the respondents 1 to 5 and 7.

3.The case of the petitioner/plaintiff is that the suit property originally belonged to her father-in-law, K.M.Vasudeva Mudali, who was blessed with five children, through his marriage to his wife, Ranjithammal. The said K.M.Vasudeva Mudali has executed his Will on 16.07.2003 and also got it duly registered as Doc.No.35 of 2003 before the S.R.O, Kaveripattinam. Under the said Will the suit property has been bequeathed to the husband of the plaintiff. The said Vasudeva Mudali subsequently passed away on 02.06.2004 and according to the plaintiff, her husband, by virtue of the bequest in the Will, took possession of the suit property and also mutated his name in all the revenue records. Later, the petitioner's husband died on 27.12.2009, leaving behind the petitioner alone, as his only class-I legal heir and consequently, the petitioner has become the absolute owner of the suit property. However, the defendants



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had claimed right under a Will dated 12.05.2004 which is registered as Doc.No.20 of 2004 before the S.R.O, Kaveripakkam, which apparently is a later Will, under which the property has been bequeathed to the respondents 1 to 6 herein and they have in turn sold the property to the 7th respondent.

4.It is the case of the revision petitioner that her father-in-law was not conscious at the relevant point of time when the second Will came to be executed and the said Will is a fabricated Will. In order to establish the same, the petitioner filed an application to send the signatures and finger prints found in the alleged Will dated 12.05.2004 as well as signatures found in the Will dated 16.07.2003 to a handwriting expert, by appointing an Advocate Commissioner and to obtain an expert opinion from the Forensic Department with regard to the disputed signatures as well as finger prints in both the Wills. The Trial Court has dismissed the application on the ground that the Will has to be proved in terms of Section 68 of the Indian Evidence Act and that it would not be proper for the Court to compare the signatures and finger prints in two Wills.

5.The learned counsel for the petitioner would submit that the Trial Court



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has erroneously dismissed the application and when it is the specific contention of the plaintiff that the second Will has been fabricated, an opportunity ought to have been given to establish the same by having the signatures and finger prints compared by an expert. He would therefore pray for the revision being allowed.

6.Per contra, the learned counsel for the contesting respondents would submit that the Trial Court has rightly dismissed the application since the parties have to prove the Will by examining the attesting witnesses and the report of the expert is not conclusive as held by the Hon'ble Supreme Court in *Chennadi Jalapathi Reddy Vs. Baddam Pratapa Reddy (Dead) through LRs and Another*, reported in (2019) 14 SCC 220. Therefore, no merit in the revision and the same deserves to be dismissed.

7.I have carefully considered the submissions advanced by the learned counsel on either side.

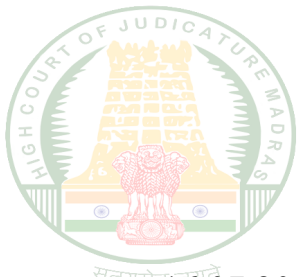
8.Admittedly, both the contesting parties to the suit are claiming under two different registered Wills. It is trite law that a Will, being a testamentary instrument, has to be necessarily proved only in terms of Section 63(c) of the



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Indian Succession Act r/w Section 68 of the Indian Evidence Act. The Trial Court has found that the stage of examining the attesting witnesses has not even reached and it would be proper for the Court to go by the evidence of the attesting witnesses which is of utmost importance. Even, the Hon'ble Supreme Court in *Chennadi Jalapathi Reddy's* case, has held that the opinion of the expert is not conclusive. In the light of the above, I do not see any requirement to interfere with the order of the Trial Court at this juncture. The parties shall be entitled to examine the attesting witnesses to the Wills under which they claim respective rights and after examination of the attesting witnesses, if the Trial Court is of the opinion that, opinion of an expert would come in handy to decide the contentious issues in the light of the then available evidence, it shall be open to the Trial Court to even *suo motu* seek comparison of the signatures and thumb impressions of the two Wills to arrive at the truth. At this stage, the application is certainly premature. However, at the same time, I find that the Trial Court has erroneously found that two Wills cannot be sent for comparison. The Wills are contemporaneous in nature, one is dated 16.07.2003 and the other is dated 12.05.2004 and they have been executed within few months apart each other. Both are registered instruments containing signatures of the testator as well as thumb impressions of the testator. The execution of the first Will dated



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16.07.2003 is also admitted by the defendants since there is reference to the same in the second Will dated 12.05.2004. Therefore, in the event of the Trial Court requiring the report of an expert after conclusion of trial, then it shall call for a report from the Forensic Department regarding the admitted signatures in the Will dated 16.07.2003 and the disputed signature in the Will dated 12.05.2004 and based on the evidence already on record and the report that may be sought for from the Forensic Department, the Trial Court shall thereafter decide the contentious issues.

9. With the above observations, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

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Speaking/Non-speaking order
Index : Yes/No
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To

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WEB COPY The Additional Subordinate Judge, Krishnagiri.

P.B.BALAJI.J.

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Pre-delivery order made in
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