



WEB COPY



Civil Revision Petition No. 1674 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.PD.No.1674 of 2025
and C.M.P.No.9648 of 2025

Narasimman

... Petitioner

Versus

1. Mahalakshmi

Sureshbabu @ Jeevarathinam (died)

2. Mythili

3. Leelavathi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Fair and Decretal order dated 27.01.2025 passed in I.A.No.9 of 2020 in O.S.No.162 of 2010, pending on the file of the Additional District Munsif Court at Tiruvallur

For Petitioner : Mr.Krishnasamy R

For Respondents : Mr.A.Palaniappan

ORDER

Challenging the dismissal of the application seeking appointment of an Advocate Commissioner to send the plaint document No.2 dated



12.12.1991 and Ex.A14-Will dated 07.04.1991 to the Forensic Department to compare the signatures found in the said documents, the 3rd defendant is before this Court.

WEB COPY

2. The parties are referred to in the same ranking as before the trial Court. The facts are as follows:

(i) The 1st respondent/plaintiff had filed the suit O.S.No.162 of 2010 on the file of the District Munsif, Thiruvallur seeking a declaration of her right to the suit properties and for consequential injunction and to declare the Sale Deeds dated 07.12.2007 and 25.09.2008 executed by the 1st defendant in favour of the 3rd defendant as null and void.

(ii) The plaintiff would submit that the suit property belonged to one Kuppusamy Chettiar. He had executed an unregistered Will in favour of his descendants on 07.04.1991 and the plaintiff is one of the beneficiaries, having derived a right to the “B” schedule in the said document. On the death of the said Kuppusamy Chettiar, the Will came into force.



WEB COPY

iii) The 1st defendant is the father of the plaintiff and husband of Leelavathi(mother of the plaintiff). The relationship between her mother and father was not very cordial and they had separated a long time ago. Thereafter, it appears that the defendants had created false documents. Her mother had already published a general notice on behalf of the plaintiff, while she was a minor on 23.06.2001, in the Tamil daily “Dinamani” regarding the attempts being made by the defendants to alienate the property.

iv)The plaintiff would submit that she was originally studying in a convent at Udhagamandalam and is now pursuing 3rd year BDS at Saveetha Dental College. Her mother had mortgaged the suit property to one Dakshinamurthy on 30.08.2006. The 1st defendant was leading a wayward life and has not cared to maintain the plaintiff or her mother. Thereafter, he had filed a divorce petition in H.M.O.P.No.72 of 2004 on the file of the Sub Court, Thiruvallur which was dismissed for default on 12.04.2006. The plaintiff would further submit that the 1st defendant and his family members were taking all steps to torture her mother and taking advantage of the separation of the 1st defendant and his wife, the other



defendants have attempted to create encumbrances in respect of the suit property.

WEB COPY

v) The plaintiff would submit that the 1st defendant had created a fabricated a Will dated 12.12.1999 as though it was executed by Kuppusmy Chettiar and the alleged Will dated 12.12.1991 is a sham and nominal one. On the basis of this Will, the 1st defendant had alienated the suit items of properties except item No.2 to the 2nd defendant under a registered Sale Deed dated 07.12.2007. The 2nd defendant, in turn, had sold the property in favour of the 3rd defendant under a registered Sale Deed dated 25.09.2008. The plaintiff has therefore come forward with the suit in question.

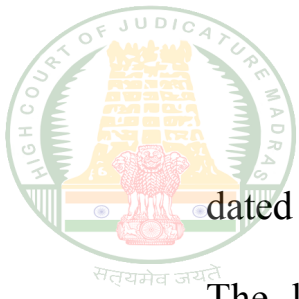
3. The 3rd defendant had filed a written statement *inter-alia* denying the averments set out in the plaint and put the plaintiff to strict proof of the alleged Will dated 07.04.1991. He would contend that he has no knowledge about the matrimonial relationship between the plaintiff's mother and her father. He would further submit that the said Kuppusamy Chettiar, in a sound and disposing state of mind, had executed a Will dated



WEB COPY

12.12.1991 bequeathing the properties under the said Will. The properties that were purchased by the 3rd defendant under the Sale Deed dated 25.09.2008 has been bequeathed to the 1st defendant. Therefore, the 1st defendant has a valid right and title to sell the property to the 2nd defendant and the 2nd defendant, in turn, to the 3rd defendant. Even assuming that the said Kuppusamy Chettiar had executed a Will dated 07.04.1991, the same stood cancelled by virtue of the subsequent Will dated 12.12.1991. Therefore, the defendants have sought for dismissal of the suit in question.

4. The 3rd defendant has thereafter come forward with an application to send the plaint document, Will dated 12.12.1991 and Ex.A14-Will dated 07.04.1991 for comparison of the signatures thereon with the signatures of Kuppusamy Chettiar in either of the documents. This application has been dismissed by the learned Additional District Munsif, Thiruvallur on the ground that the Will has to be proved in the manner known to law, namely as per the provisions of Section 63(c) of the Indian Succession Act and 68 to 71 of the Indian Evidence Act. Therefore, without taking steps in this regard, the plaintiff has filed the instant application to have the plaint document dated 12.12.1991 and the Will



dated 07.04.1991 sent to the Forensic Department for an expert opinion.

The learned Judge had also observed that both these documents are disputed by either parties and that being the case, the application itself was without any legal basis. Aggrieved thus, the 3rd defendant is before this Court.

5. Heard the learned counsels on either side and perused the materials available on record.

6. As rightly pointed out by the learned counsel for the respondents, who had belatedly entered caveat, the Will has to be proved by the propounder by examining the attesting witnesses. This is a mandatory requirement and the same cannot be overlooked and the signature in the Will cannot be sent for scientific examination. Further, the plaint document No.2, dated 12.12.1991 and Ex.A14-Will dated 07.04.1991 are disputed by the plaintiff and the defendants respectively. The plaintiff has not produced any admitted signature with which the signature can be compared. Therefore, the learned Judge has rightly dismissed the said application and I see no reason to hold otherwise. Accordingly, this Civil



Civil Revision Petition No. 1674 of 2025

Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

22.04.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To,

The Additional District Munsif Court at Tiruvallur



WEB COPY



Civil Revision Petition No. 1674 of 2025

P.T.ASHA, J.,

srn

C.R.P.PD.No.1674 of 2025
and C.M.P.No.9648 of 2025

22.04.2025