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C.R.P.(PD)(MD) No.2881 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	19.11.2024
Pronounced on	29.01.2025

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No. 2881 of 2024 and
CMP(MD).No.16459 of 2024

Selvakumar

... Revision petitioner / Plaintiff

Vs.

Alagu Deepa

... Respondent / defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the I.A.No.04 of 2024 made in O.S.No.199 of 2021, dated 24.09.2024 on the file of the Additional District and Sessions Court, Periyakulam.

For Petitioner : Mr. R. Murali

For Respondent : Mr.T.C.S. Thillainayagam

ORDER

This Civil Revision Petition is preferred against the fair and



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decreetal order order, dated 24.09.2024 made in I.A.No.04 of 2024 in O.S.No.199 of 2021, dated 24.09.2024 on the file of the Additional District and Sessions Court, Periyakulam.

2. The revision petitioner as plaintiff filed the above suit in O.S.No. 199 of 2021 on the file of the Additional District and Sessions Court, Periyakulam for partition claiming $\frac{1}{2}$ share in the plaint schedule of property and for a direction to direct the defendant to pay the arrears of income from the plaint properties to the plaintiff. Pending suit, the revision petitioner / plaintiff took out an application in I.A.No.4 of 2024 under Order 26 Rule 10 A CPC for comparison of thumb impression made in the Will, dated 10.06.2021 with the Will dated 01.08.2008, which was registered on the file of the Sub Registrar, Nilakkottai by an expert and the said application was resisted on the side of the respondent / defendant. The trial Court by its order, dated 24.09.2024 dismissed the said application by stating that the thumb impression is not clear and that it is not possible for the expert to compare the said thumb impression with the thumb impression found in the other Will. Aggrieved by the same, the present revision is preferred by the revision petitioner herein / plaintiff.



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3. The learned counsel appearing for the revision petitioner / plaintiff would submit that the plaintiff's case solely depends upon Ex.A1 viz., the Will, dated 10.06.2021 and therefore, the plaintiff is bound to prove the same. While being so, it has become imperative to prove the Will by comparing the thumb impression found in the Will, dated 10.06.2021 and in the Will dated, 01.08.2008. However, the trial Court, without considering the same erroneously dismissed the said application, which calls for interference by this Court. He would further submit that the trial Court in the impugned order arrived at a conclusion against the thumb impression through naked eyes is against the settled proposition of law and the same is liable to be set aside.

4. On the other hand the learned counsel appearing for the respondent / defendant would submit that in order to protract the trial the alleged Will has been fabricated by the revision petitioner / plaintiff and that the Will was fabricated when the testator of the Will was bed ridden in the hospital and therefore, no useful purpose would be served. Hence, the trial Court has rightly dismissed the said application which calls for no interference by this Court.



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5. Heard on both sides. Records perused.

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6. On perusal of the impugned order it is seen that, the trial Court has dismissed the said application on the ground that the thumb impression found in the disputed Will is not clear and therefore, it is not possible for an expert to compare the same with the admitted document. It has further held that the plaintiff has to prove the genuineness of the un-registered Will, as per Section 67 of the Bharatiya Sakshya Adhiniyan, 2023 and Section 63 of the Indian Succession Act, 1925.

7. The disputed finger print is usually required to compare the thumb impression with the known sample of the testators thumb impression to verify the identity of legal documents such as Will, power deed etc., especially when the testator is unable to sign.

8. It is worth mentioning that the report of handwriting expert shall not be a conclusive proof and it is only a piece of evidence which has to be considered along with other evidence available on record. In the case of Will, the propounder has to prove the same in accordance with Section 67 of the Bharatiya Sakshya Adhiniyan, 2023 and 63 of the



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Indian Succession Act, 1925. In that event, the respondent / defendant also have an opportunity to rebut such evidence which is likely to come on record by way of report or testimony of handwriting expert. Therefore, the order passed by the trial Court is liable to be set aside and accordingly, set aside. The trial Court is directed to take necessary steps to send the disputed document / Will along with the admitted document / Will for comparison by an expert.

9. In the result, this Civil Revision Petition is allowed setting aside the order, dated 24.09.2024 made in I.A.No.04 of 2024 made in O.S.No. 199 of 2021, on the file of the Additional District and Sessions Court, Periyakulam. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.01.2025

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Pre-Delivery Order made in
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