

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**
PG.D.PM/IR.,
ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Tuesday, the 20th Day of August 2024

I.A. No.1/2024

-in-

(O.S. No.30/2022)

Muthulakshmi ... Petitioner / Defendant

-Vs-

1. Selvakumar

2.Balamuralidaran ... Respondents /Plaintiffs

This petition came on 5.08.2024 before this Court for enquiry in the presence of Tvl. T.Muthamil Selvan and Tmt.P.Gowsalya, Advocates for the petitioner. Thiru.P.Lakshmanan, Advocate for the Respondents and after having heard the argument of both sides and on perusal of case records, this Court delivers the following :

ORDER

1. Petition filed by the petitioner / defendant under Order 26 Rule 10 (A) of CPC.

2. **The petitioner's contention in brief :**

The petitioner is the defendant in the suit filed by the respondents as plaintiff for the relief of declaration and injunction. This petitioner has also filed another Suit in O.S.No.157/2022 for the relief of partition and both the suits are tried jointly. The evidence is recorded in O.s.No.30/2022 and the plaintiffs have examined P.W.1 and have filed original documents which are marked as Ex.A1 to Ex.A8. These respondents/plaintiffs have claimed that the suit properties were bequeathed by their father late.Krishnan under Ex.A5 Will and have sought the relief of declaration of their title based on it. The petitioner contends that the said Krishnan did not execute any Will and the Ex.A5 Will is created by the plaintiffs fraudulently. It is his further contention that this fact could be established if the alleged signature of Krishnan found in Ex.A5 is compared with his admitted signatures found in Ex.A3 and Ex.A4 marked by the plaintiffs. Therefore, it is just and necessary to appoint an advocate commissioner to take the said original documents to the handwriting expert for comparison and get a report. No serious prejudice would be caused to the respondents/plaintiffs if Ex.A5 is compared. On the other hand, if the signatures are not compared. It would cause great prejudice to the petitioner. So the petitioner prays to appoint an advocate commissioner and direct him to

take the Ex.A3, Ex.A4 and Ex.A5 for being compared by a handwriting expert.

3. **The Respondents' contention in brief :**

The respondents/plaintiffs have contended that both the suits in O.S.No.30/2022 filed for declaration and injunction by these respondents and the suit in O.S.No.157/2022 filed by the petitioner for partition are tried jointly and the 1st respondent was examined as P.W.1 and Ex.A1 to Ex.A8 were marked and the case is posted for cross examination by the petitioner. This petitioner is aware about the execution of the Will dated 25.1.2021 by her father Krishnan and she has filed this petition belatedly only to protract the proceedings with false allegations. The petition is not maintainable and deserves to be dismissed. So they pray to dismiss the petition.

4. Point for determination in this petition is, **Should the petition be allowed ?**

5. No oral or documentary evidence were let in by either party.

6. Heard arguments of both sides.

7. **Answer to Point :**

The learned counsel for the petitioner argued that her father did not execute any Will and the alleged Will dated 25.1.2021 is forged one.

Therefore, unless the signatures found in Ex.A5 Will are compared with the admitted signatures of Krishnan made by him in Ex.A3 and Ex.A4, she would not be able to prove that the said Will is a forged one. So, he prays to appoint an advocate commissioner to take those documents to expert for comparison of signatures.

8. The learned counsel for the respondents, per contra argued that the existence of the Will (Ex.A5) was known to the petitioner as soon as its execution and this petition is highly belated and is filed after examination of P.W.1 and so he prays to dismiss the petition.

9. It is noted that both parties have filed separate suits as mentioned above, one for declaration of title and the other for partition, and both the suits are tried jointly. It is also noted that the evidence is recorded in the suit for declaration viz., O.S.No.30/2022 filed by these respondents and P.W.1 was examined on 30.1.2024. This petition is filed on 14.3.2024 after seeking time for cross examining P.W.1. The reason for the belated filing of the petition as given by the petitioner's counsel is that it could be filed only after filing of the original documents as the comparison could be done only with the originals. He also contended that if the petition was filed before filing of the

original documents, the respondents could have manipulated the original documents. This reason given by the petitioner is quite acceptable and just because there is some delay in filing the petition for comparison, the petition cannot be dismissed. The Hon'ble Madras High court in "**S.Chinnathai Vs. K.C. Chinnadurai**"¹ has held as under:

"10. When the Civil Court decides an application filed under provisions of Order 26 Rule 10A of the Civil Procedure Code, the Court has to decide as to whether the said applicaiton is necessary for the purpose of deciding the case. While deciding the said application, the Civil Court cannot reject the applicaiton only on the ground of delay, until or unless it comes to the conclusion that the application lacks bonafides or the same has been filed with the sole view to protract the proceedings."

In this case, the dispute between the parties is in respect of their valuable right over the property wherein, one party asserts right based on the said Will and the other disputes the same. The comparison of the signatures of Krishnan found in those documents and a report of an expert in that regard would assist this Court to come to a fair conclusion about the genuineness of the said Will. Therefore, this application is necessary for the purpose of deciding the title of the parties and eventually in both the cases. As already pointed out, only the originals could be sent for comparison and hence the delay in filing the petition cannot be said to be *malafide* and only to protract the proceedings.

¹ (2010) 1 L.W. 646

I.A.No.1/2024 in O.S.No.30/2022 dated-20.8.2024.

10. However, this court has to consider whether the signatures found in the said documents are capable of comparison meaning thereby, if they are contemporary and made within a period of reasonable proximity. While considering this aspect, it is found that the disputed document Ex.A5 is of the year 2021 and the admitted signatures found in Ex.A3 and Ex.A4 were made in 2005 and 2012 respectively and are made within the period of reasonable proximity and are hence capable of comparison. It is therefore held that the petition is maintainable and has to be allowed.

11. It is accordingly held that Mr.S.Balasubramaniam, Advocate be appointed as Commissioner and be directed to take the original documents viz.,Ex.A3, Ex.A4 and Ex.A5 in a sealed cover to the Regional Forensic Laboratory, Madurai for comparison of the signatures of Mr.Krishnan and for getting the opinion of the expert. His fee is fixed at Rs.5,000/- to be paid by the petitioner/defendant directly to the Advocate /Commissioner within one week from the date of this order and a memo to that effect shall be filed. This point is thus decided.

In the result, this petition is allowed and **Mr. S.Balasubramaniyam, Advocate** is appointed as Commissioner and is directed to take the original documents viz., Ex/A3, Ex.A4 and Ex.A5 in a sealed cover to the Regional Forensic Laboratory, Madurai for comparison of the signatures of Mr.Krishnan and for getting the opinion of the expert. His fee is fixed at Rs.5,000/- to be paid by the petitioner / defendant directly to the Advocate / Commissioner within one week from the date of this order. The petitioner is directed to pay the fees claimed by the Regional Forensic Laboratory, Madurai. For Commissioner's report, call on 20.09.2024.

This Order typed by me directly in the laptop, corrected and pronounced in Open Court on this the 20th day of August 2024.

Additional District Judge,
Dindigul.