

In the Court of District Munsif, Mudukulathur

Present : Ms.J.C.Aparna, B.A, L.L.B.,

District Munsif,

Mudukulathur.

Saturday the 21st day of June 2025

I.A.No.6/2025

in

O.S.No.24/2016

1. R.Sivasankarakumar
(through his power agent
S.Thangapandian)

2. S.R,Ponnumani

..... Petitioners/Defendants

/VS/

Sundari

..... Respondent/Plaintiff

This petition came on 12.06.2025 before this court for a final hearing in the presence of Thiru.H.Muralidharan, Learned Counsel for the Petitioners/Defendants and Thiru.K.Velusamy, Learned Counsel for the Respondent/Plaintiff and upon hearing both sides arguments and upon perusing the material records and having stood over till this day for consideration, this court delivered the following:

ORDER

This petition has been filed under Order 26 R 10(A) of Civil Procedure Code to compare the signatures in Ex.B13 and Ex.A12 and to file a report by appointing a Advocate Commissioner.

2. The contention of the Petitioners/Defendants in brief:-

The petitioner is the 2nd defendant in the main suit. He has filed this petition for himself and on behalf of the 1st defendant. The petitioners prays to send the Ex.A12, the unregistered will on basis of which the plaintiff claims their title

and the Ex B13, the document showing the signature of the executor in the Will to the handwriting expert to compare the same to prove that the above said Will is a fraudulent one. It is also stated that the petitioners will be put to irreparable loss if the petition is not allowed and he is ready to bear the expenses that will be incurred in appointing the advocate commissioner. Hence prays to allow the petition.

3. Brief averments of the Respondent/plaintiff in brief:

The respondent/plaintiff denies the averments in the petition and states that the court itself has ample powers to compare the signatures in the said exhibits under the Indian Evidence Act and prays to dismiss this petition which has been filed in the stage of defendant side further evidence to prolong the case. Hence prays to dismiss the petition with costs.

4. Point for consideration:-

Whether the petition be allowed and the relief be granted as prayed for?

No documents filed on either side. Heard both sides.

5. Answer to the Point:-

5.1. On perusal of the facts and circumstances of the present case it is seen that the petitioners wants to prove that the Ex. A12, unregistered Will relied by the respondent/plaintiff is fraudulent by comparing the signatures with the Ex.B13, which is the Service Register of the executant of the aforementioned Will. But the question to be decided would be on whom the burden of proof lies and whether the opinion of the expert is binding on the court to come to the conclusion of the legal validity of the document. The *Hon'ble High Court of Madras in Periyathal and others Vs Gomathi and others (2018 5 LW 370)* has held that in regard to the execution of a Will, " the Court has to form a judgment from the evidence, the propounder may let in following the procedure prescribed

under Sections 68, 69 and 71 of the Evidence Act. According to Section 63(a) of the Succession Act, in order to say that a will has validly been executed it is not necessary that it should contain the signature of the testator; but on the other hand it is enough if the testator affixes his mark or some other person signs the document in the presence of the testator and under his direction. And therefore, in a case where the expert opines that the signature seen on the Will is not that of the testator but at the same time the execution has validly been proved, can the Court still hold that the Will is not valid relying on the opinion of the expert in preference to the uncontroverted evidence proving the execution of the Will? My answer is no, because as already noted, under law to hold that a Will is valid, it is the execution of the Will within the meaning of Section 63, Succession Act that is required to be proved unlike in the case of an ordinary document where under Section 67, Evidence Act the signature should be proved. It may in this context be relevant to note that a propounder can possibly contend that the signature which is opined to be not that of the testator by the expert, in fact is not his signature but only a mark put by him within the meaning of Section 63(a), Succession Act. The Court therefore has no need to form an opinion on the question as to the identity of the signature of the testator. This being the position in law, in my judgment, the opinion of the expert as to the identity of the signature of the testator in a Will is not a relevant fact. Expert's opinion of the testators' signature in the impugned Will not being the crucial factor for determining the truth of the same and dehors the same, when the propounders of the will would be required to establish the authenticity of the same as per the requirement of law as provided under Section 63 of the Indian Succession Act and Sections 68 to 71 of the Indian Evidence Act by examining the concerned witnesses, who are associated with the Will in question.”

5.3. The facts of the above judgment by the Honorable High Court squarely applies to this case, the burden of proof is on the propounders of the

Will, in this case on the respondent/plaintiff to prove the Will in a manner known to law. The respondent/plaintiff has examined witnesses to prove his case and they have been fully cross examined by the petitioners/defendants. Hence it is now the duty cast upon the court to appreciate the evidence available on record. But since the expert's opinion is merely an opinion that is not binding on the court and has no legal weight as to completely shift the evidence on record. The only reason projected by the petitioners/defendants for entertaining the above said applications is that the Will in question is a forged document and accordingly, the same needs to be scrutinized by an expert for arriving at the truth of the same. It would be a waste of time and resources to send the case records to compare the signatures when the report of an expert would have little to less binding on the court. Also under law to hold that a will is valid, it is the execution of the Will within the meaning of Section 63, Succession Act that is required to be proved unlike in the case of an ordinary document. Hence in the light of the above said circumstances, this court is not inclined to allow this petition.

In the result, this petition is dismissed. No costs.

Directly typed by me in my official laptop and formatted by Steno Typist, corrected and pronounced by me in open court on this 21st day of June 2025.

**District Munsif,
Mudukulathur.**

Both sides witnesses and documents : Nil

**District Munsif,
Mudukulathur.**

