

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE AT SALEM

PRESENT: THIRU. A. M. RAVI, B.A., B.L.,

II Additional District Judge, Salem.

Thursday, the 13th day of February 2025.

I.A. 5/2024 & I.A.6/2024

in

O.S.238/2010

Both the Petitions:

R. Thangammal

... Petitioner/Plaintiff.

Vs.

1. R. Periyammal(died)

... Respondent / Defendant.

2. R. Kandasamy(died)

3. M. Venkatachalam

4. M. Shanmugam

5. M. Malarkodi

6. R. Muthukali

7. K.Periyagoundar (died)

8. Duraisamy

9. Periyammal @ Saroja

10. Parimala

11. Rasammal

12. Mani @ Saroja

13. K. Manickam

14. Uma @ Uma Maheswari

15. Praba

...Respondents / Defendants.

Both the Petitions are taken on file on 09.09.2024 and coming for final hearing on 04.02.2025 before me in the presence of Tr. S.V. Sivakumar, Advocate for the Petitioner and Thiru.C.Jayaprakasham, Advocate for the Respondents 12 to 15, the Respondents 1, 2 & 7 died, the Respondents

3 to 6, 9 to 11 are ordered exparte and on hearing both side arguments, and upon perusing the entire records and matter having stood over for considering till this day, this Court delivered the following:

COMMON ORDER

I.A.5/2024:

The Petitioner / Plaintiff in I.A.5/2024 filed a petition under Section 45 of Indian Evidence Act to send the admitted documents such as the test report dated 16.7.1968 and the disputed document i.e., the will dated 23.08.2011 to Handwriting Expert and directing him to comparison and send the report

I.A.6/2024:

The Petitioner / Plaintiff in I.A.6/2024 filed a petition under Order 26 Rule 10(b) of CPC to appoint a commissioner directing him to take the admitted signature and disputed signature submitted for expert comparison and to hand over the same to the Hand writing Expert and receive the report from the FSL.

2. The Summary of the averments in the Affidavits filed by the Petitioners / Plaintiff both the petitions are read as follows:-

The Petitioner / Plaintiff filed the suit for partition and separate possession against the Defendants. The Respondents filed their written statement along with the xerox copy of the will dated 08.07.2004 alleged to have been executed by father by claiming exclusive right in the suit property and also denying his right of partition. The Petitioner got the certified copy

and noticed that the signature of his father in the said will is forged. The Petitioner's father did not execute any will to everybody's knowledge. The Defendants have fabricated the will with an intention to defraud the Petitioner of his legitimate share in the suit property. The father of the Petitioner had submitted an application to the Madras State Electricity Board for getting service connection to his well in his property. The Petitioner's father also put his signature in the test report of Madras State Electricity Board in form A as well as in form C. The Petitioner was able to get those records. Hence, these petitions to send the admitted documents such as the test report dated 16.7.1968 and the disputed document i.e., the will dated 23.08.2011 to Handwriting Expert and directing him to comparison and to appoint a commissioner directing him to hand over the same to the Hand writing Expert and receive the report from the FSL.

3.The Summary of the averments in the Counter filed by the Respondent / Plaintiff reads as follows:-

The alleged above said documents are not contemporary one to compare the signature in the will dated 23.08.2011. This Court already close the Expert petition filed in I.A.242/2012, but the petitioner had not preferred any revision against the said order and the said order has attained finality and hence the present petition for the same relief is barred by Resjudicata and the same is not maintainable. The Petitioner come forward with these

petitions with false allegations with a view to prolong the case endlessly since she has successfully protracted the case more than 14 years Hence, prayed to dismiss these petitions.

4. Both side no oral evidence adduced and no documents marked as an Exhibit.

5. Both side arguments heard.

6. The Point for consideration in these petitions are that Whether these petitions are deserved to be allowed or not?

POINT:

7. The Petitioner / Plaintiff filed a suit for partition and separate possession and with cost. It is one of the old pending suit pending before this Court. The suit is ripe for trial. At this juncture the Petitioner / Defendant filed this petition to send the admitted documents such as the test report dated 16.7.1968 and the disputed document i.e., the will dated 23.08.2011 to Handwriting Expert and directing him to comparison and send the report. For which filed another petition to seeking appointment of Commissioner directing him to take the admitted signature and disputed signature submitted for expert comparison and to hand over the same to the Hand writing Expert and receive the report from the FSL.

8. The reason submitted by the Petitioner / Plaintiff is that the defendants in his written statements he filed a xerox copy of the will dated 08.07.2004 allegedly have been executed by the father of the Plaintiff and

the Defendant and claiming exclusive right in the suit properties and also denying the partition right of the Plaintiff. The said will is a forged one. Their father did not execute any will during his life time and the said will is a fabricated and forged one.

9. The other side objection in their counter is that whether signature put in the will is a forged one or not by sending the same for expert opinion are not tenable in law. Since the alleged above said documents are not contemporary one to compare the signature in the will dated 23.08.2011. The petition in I.A.242/2012 has been closed by this Court, but the Petitioner had not preferred any revision against the order passed in I.A.242/2012 and the said order has attained finality and hence the present petition for same relief is barred by resjudicata and the same is not maintainable.

10. Considering the contention submitted by the both sides and on careful perusal of the case records it reveals that it is a suit for partition, the Defendant claiming right over the suit property allegedly will dated 08.07.2004 executed by his father in his favour. The Plaintiff side submitted that the said will is a forged one. As per the order of the Honble High Court order dated 13.02.2019 in CRP 489/2014 a documents from the Tamil Nadu Electricity Board test report dated 16.07.1968 bearing signature of

K.Rangasamy gounder form A and form "C" was called for and they produced the original will before this court and in view of the order passed by the Hon'ble High Court and in the interest of the Justice this petitions are allowed, the disputed signature in the document ie.,unregistered will dated 08.07.2004 (the Petitioner wrongly mentioned as 23.08.2011) and admitted signature I.e, the test report dated 16.07.1968 sent to the FSL for comparison with following conditions.

IN THE RESULT :-

- i. The Advocate Ms. Shilfa Helen, Enrolment No.7966/2021 appointed as Court Commissioner. The Commissioner is hereby directed to hand over the disputed signature in the document ie.,unregistered will dated 08.07.2004 (the Petitioner wrongly mentioned as 23.08.2011) and admitted signature i.e., the test report dated 16.07.1968 with the sealed cover of this Court to the Handwriting Expert, FSL,Chennai for comparison, and after comparison the Commissioner has directed to collect the report with sealed cover from the concerned Finger Print Bureau and submitted before this Court in earlier date.
- ii. The Commissioner remuneration is fixed Rs.10,000/- to meet of out the the expenses of commissioner.
- iii. The Head Ministerial staff of this Court directed to make necessary arrangements for the comparison of disputed and admitted signatures

contained in the documents with affix Court specimen seal and duly packed with documents in a proper manner and affix a seal and comply the order properly and utilize the amount Rs.19,000/- to be deposited by the Petitioner / Plaintiff for obtained necessary demand draft if necessary for meet out the expenses of the Finger Print Bureau and also payment of the commissioner remuneration.

iv. The Petitioner / Plaintiff directed to deposit for a sum of Rs.19,000/- before this Court to meet out the expenses of the advocate Commissioner remuneration and also the FSL expenses regarding the comparison of the disputed and admitted signature of the document. The amount Rs.19,000/- to be deposited on or before 26.02.2025 before this Court.

v. This Petitioner is hereby directed to deposit a sum of Rs.19,000/- before this Court to meet out the expenses of the advocate Commissioner and also the Handwriting expert expenses regarding the comparison of admitted and disputed signature on or before 26.02.2025. Failing which this petition shall stands dismissed. Call on 27.02.2025.

Dictated to Steno-typist, directly typed by her, corrected and pronounced by me in the open Court, the 13th day of February 2025.

**II Additional District Judge,
Salem.**

APPENDIX :

List of Petitioner side witnesses : NIL

List of Petitioner side Documents : NIL

List of Respondent side witnesses : NIL

List of Respondent side Documents : NIL

**II Additional District Judge,
Salem.**