

IN THE COURT OF THE SUBORDINATE JUDGE, AVINASHI

Present: Thiru. K. Suresh Kumar, B.A. B.L.,
Subordinate Judge, Avinashi.

Thursday, the 8th day of December, 2022

IA.No.239/2022

in

O.S.No.434/2016

Karuppusamy

.. Petitioner/ 2nd Defendant

-Versus-

1. Vellingiri
2. Dhavamani
3. Savithiri
4. Kavitha
5. Malliga (Died)
6. Jothi
7. Sudha
8. Amsaveni
9. Banumathi

... Respondents /Plaintiffs

This petition was filed on file on 11.04.2022 and coming to day before me in the presence of Thiru.A.Chinnasamy, Advocate for the petitioner and Thiru.V.K.Subramaniam, Advocate for the respondents and having stood over this day for consideration this court delivered the following :

ORDER

This petition is filed seeking to send for the registered settlement deeds dated 19.09.2006 as Document No.8433/2006 and dated 20.09.2006 as Document No.378/2007 SRO, Mettupalayam to the expert for comparison with his signatures and thumb impression found in the registered sale deeds registered as Document No.s.3706/1996 and 4701/1996 SRO, Avinashi.

2) The brief facts of the petition is as follows:

The petitioner has filed this petition under Order 26, rule 10-A r/w Sect.45 of Indian Evidence Act stating that the petitioner's father had executed a registered settlement deed in favour of the petitioner on 19.09.2006 and 20.09.2006 which are already marked as Ex.B12 and B13 on the petitioner's side. Whereas, the respondents are disputing the signature and thumb impression of the petitioner's father Mudali Karuppan in both the aforesaid documents. Since the said Mudali Karuppan had executed two registered sale deeds registered as document No.3706/1996 ad 4701/1996 SRO Avinashi, to one V.Parathuvaraj and S.P.Selvaraj. The signature of the aforesaid two sale deeds. Since the original sale deeds are in the hands of the purchasers. The signature and thumb impression register maintained with SRO Avinashi in which the signature and thumb impression was obtained at the time of registering the documents are to be summoned to the Court to send the same to the expert for comparison.

3) The brief facts of the counter is as follows :-

The respondent has stated that the deceased Mudali Karuppan never executed any settlement deed in favour of the petitioner on 19.09.2006 and 20.09.2006 and he was not in a good state of health and mind and was unable to understand things around him and he was a paralytic patient and was not able to move, which affected his mental health and he was hospitalized since 2004 and he was also bed ridden

and also the suit properties are ancestral and joint family properties and no settlement deed could be executed in respect of ancestral and joint family properties and hence the petition is liable to be dismissed.

4) POINT: Whether the petition is allowed or not?

The petitioner has filed this petition under Order 26, rule 10-A r/w Sect.45 of Indian Evidence Act stating that the petitioner's father had executed a registered settlement deed in favour of the petitioner on 19.09.2006 and 20.09.2006 which are already marked as Ex.B12 and B13 on the petitioner's side. Whereas, the respondents are disputing the signature and thumb impression of the petitioner's father Mudali Karuppan in both the aforesaid documents. Since the said Mudali Karuppan had executed two registered sale deeds registered as document No.3706/1996 ad 4701/1996 SRO Avinashi, to one V.Parathuvaraj and S.P.Selvaraj. The signature of the aforesaid two sale deeds. Since the original sale deeds are in the hands of the purchasers. The signature and thumb impression register maintained with SRO Avinashi in which the signature and thumb impression was obtained at the time of registering the documents are to be summoned to the Court to send the same to the expert for comparison.

Whereas the respondent has stated that the deceased Mudali Karuppan never executed any settlement deed in favour of the petitioner on 19.09.2006 and he was not in a good state of health and mind and was unable to understand things around him and he was a paralytic patient and was not able to move, which affected his mental health and he was hospitalized since 2004 and he was also bed ridden and also the suit properties are ancestral and joint family properties and no settlement deed could be executed in respect of ancestral and joint family properties and hence the petition is liable to be dismissed.

Heard both sides and on perusal of the petition and counter statement it is found that the petitioner states that his father had executed two registered settlement deeds in his favour on 19.09.2006 and 20.09.2006 and same is marked as Ex.B12, and B13 on his side and the respondents are denying the seeking and thumb impression of the petitioner's father in the aforesaid settlement deeds. Further the petitioner states that, his father Mudalikaruppan had executed registered sale deed on 20.09.1996 in favour of the V.Paratharaju and another sale deed 04.09.1996 in favour of the S.P.Selvaraj and both the documents are registered in SRO, Avinashi and hence a comparison of signature and thumb impression of the petitioner's father above said settlement deeds with the aforesaid two registered sale deeds executed by his father registered as document No.3706/1996 and 4701/1996 SRO, Avinashi will be helpful to come correct conclusion the suit and hence, the above said documents mentioned the petition shall be sent to the expert opinion mentioned the petition for comparison with the signature and thumb impression in the register sale deeds.

Whereas the respondents states that, it is false state that the petitioner's father had executed registered settlement deed in favour of the petitioner on 19.09.2006 and 29.09.2006 and he was not any disputing and he was paralytic and unable to understand the nature of the documents and also he was hospitalized since 2004 and all the documents are fabricated one and also the properties mentioned in the settlement deeds are ancestral and joint family properties and hence liable to be dismissed.

Since the respondents dispute the genuineness of the two settlement deeds relied by the petitioner's Ex.B12, B13 and it is burden of the petitioner to prove the documents which the petitioner relied upon. Since the respondents denied the signature and thumb impression of the petitioner's father the above said documents in order to provide the petitioner an opportunity to prove this case and also to

provide the parties to produce the best evidence. Since this Court is trial court, this court is inclined to allow the petition on cost.

In the result, this petition is allowed on payment of cost of Rs.2000/- by the petitioner to the respondents on or before 19.12.2022, failing which petition stand as dismissed.

Dictated to typist and typed by her directly, corrected and pronounced by me, in the Open court on the 08th day of December 2022.

Subordinate Judge,
Avinashi.

No oral or documentary evidence on both sides.

Subordinate Judge,
Avinashi.