

(2002) 09 MAD CK 0203

In the Madras High Court

Case No : C.R.P. No. 2240 of 2001 and C.M.P. No. 12058 of 2002

R. Sanjeevi Kumar and Murugan, rep. by his brother APPELLANT

Vs

K. Rengasamy, Subbulakshmi, M. Periyasamy and N.K. Thangavel RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Citation : (2002) 09 MAD CK 0203

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : N. Damodaran, for the Appellant; C.R. Rukmani and Sujatha Venugopalan - R3, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.—This revision has been preferred against the order of the Court below in I.A.No.671 of 2000 in O.S.No.942 of 1997 dated 21-12-2000, in and by which, the Court below rejected the petitioners' application for getting the opinion of the Finger Prints Expert in relation to the disputed thumb impression contained in the "will" marked as Ex.A1 along with the admitted thumb impression found in an other registered document executed by petitioners' grand-mother.

2. According to the petitioners, since the whole claim is based on the said "will" and as the thumb impression of their grand-mother contained in the said document has been seriously disputed by the respondent, it has become incumbent upon the petitioners to seek for the comparison of the said disputed thumb impression contained in the "will" with that of the admitted thumb impression found in the other registered document filed by them. The Court below was of the view that the petitioners failed to bring before the Court the document containing the undisputed thumb impression of the petitioners' grand-mother and in the circumstances, as in its view, the present application had been filed at the stage when the suit was ripe for trial, the whole idea of the petitioners was only to prolong the proceedings.

3. I am unable to accept the said reasoning of the Court below for rejecting the petitioners' application. When the whole claim of the petitioners was dependent on the "will" which contained the disputed thumb impression of the grand-mother of the petitioners and when that very crucial thumb impression is not admitted by the respondents and when the petitioners had specifically referred to the other registered document which also contain according to them the thumb impression of their grand-mother, namely, Ex.A4 and the execution of which is not in dispute as between the parties, the Court below should have in the interest of justice, acceded to the request of the petitioners for referring the "will" as well as Ex.A4 for scrutiny by a Finger Prints Expert to ascertain his opinion as regards the similarity or otherwise of the thumb impression contained in the "will" as well as Ex.A4. I am of the view that only such a course alone would have enabled the Court below to adjudicate the stand of the respective parties in an appropriate manner. The order impugned in this Revision cannot therefore be sustained. While setting aside the order impugned in this Revision and allowing the petitioners' application in I.A.No.671 of 2000 in O.S.No.942 of 1997, the Court below is directed to call for the expert's opinion of finger prints in regard to the "will", Ex.A1 and Ex.A4 by comparing the thumb impressions contained in both the documents. The Court below shall fix specific time frame for carrying out the above exercise, inasmuch as, the suit is of the year 1997. The C.R.P. is disposed of with the above directions. No costs. Consequently, connected C.M.P. is closed.