

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.2352 of 2015

& M.P.No.1 of 2015

1.Bharath (Minor)  
S/o Dr.N.Govindasamy  
minor rep. by mother &  
natural guardian Mrs.Padmini

2.Mrs.Padmini

... Petitioners/Plaintiffs

vs.

N.Narayanasamy Gounder (Died)

... Respondent/Debtor

1.The Dean  
Govt. Stanley Medical College Hospital,  
Chennai.

2.The Director of Medical Education,  
Kilpauk Medical College Hospital,  
Chennai - 10

3.The Manager,  
Indian Overseas Bank,  
West Mambalam Branch,  
Chennai.

4.The Branch Manager,  
Indian Bank, Chetpet Branch,  
Poonamallee High Road,  
Chennai.

5.The Tahsildar,  
Tambaram Taluk,  
Tambaram, Chennai.

6.Kamalavathy  
D/o late Narayanasamy

7.N.Saraswathy  
D/o late Narayanasamy

8. Rajammal  
D/o late Narayanasamy

9. Govindammal  
D/o late Narayanasamy

... Respondents  
/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.11.2014 passed in I.A.No.6675 of 2014 in O.S.No.5662 of 2007 by the learned XVII Assistant Judge, City Civil Court, Madras.

For Petitioner : Mr.M.Udyakumar

### ORDER

Challenging the fair and final order passed in I.A.No.6675 of

2014 in O.S.No.5663 of 2007 on the file of XVII Assistant Judge, City Civil Court, Chennai, the plaintiffs have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit to declare that the first plaintiff is entitled to inherit and succeed the deceased Late Dr.N.Govindasamy as his only legal heir and entitled to all terminal benefits including pension and all movable and immovable properties of the deceased and for permanent injunction.

3. It is the case of the plaintiffs that the second plaintiff was married to one Rangasamy who deserted her and after that, Dr.N.Govindasamy and the second plaintiff were living together as husband and wife. Further, according to the plaintiffs, the first plaintiff was born to Dr.N.Govindasamy and the second plaintiff. The first defendant who died during the pendency of the suit is the father of Dr.N.Govindasamy and defendants 7 to 10 are the sisters of Dr.N.Govindasamy. The defendants contended that the second plaintiff is not the wife of Late Dr.N.Govindasamy and the first plaintiff was not born to the said Dr.N.Govindasamy. The defendants filed a

written statement and are contesting the suit. The suit was taken up for trial and after plaintiffs' oral evidence, when the matter was posted for arguments, the plaintiffs filed an application in I.A.No.6675 of 2014 to refer the parties i.e., the first plaintiff, defendants 7 to 10 and their brother, who is alive for medical test namely, DNA test, before the Director of Forensic Science, Chennai. Admittedly, Dr.N.Govindasamy, is not alive. Whether the first plaintiff was born to Dr.N.Govindasamy and Padmini should be established by the plaintiffs by oral and documentary evidence. In the case on hand, the plaintiffs seek to conduct DNA test of the first plaintiff and defendants 7 to 10 and also the brother of the defendants 7 to 10. There will not be any useful purpose in subjecting the defendants 7 to 10 for DNA test which would only cause harassment and hardship to the parties.

4. From the perusal of the materials available on record, it could be seen that the Trial Court had already closed the oral evidence in the year 2012 and the matter was posted for arguments. At that stage, the plaintiffs have filed an application and when the matter was posted for arguments, the present application has been filed by the plaintiffs. The Trial Court has also observed that the second plaintiff, who is the mother of the first plaintiff has categorically admitted in her cross

examination that her marriage with one Rangasamy is still subsisting. When she had admitted that her marriage with Rangasamy is still subsisting, the present application has been filed by the plaintiffs for the DNA test of the first plaintiff with the defendants 7 to 10.

5. Taking into consideration all these aspects, the Trial Court has rightly dismissed the application. In these circumstances, I do find any error or illegality in the order passed by the trial court.

6. It is seen that the suit is pending from the year 2007 and even after the lapse of eight years, the suit has not yet been disposed of by the Trial Court. It is needless to say that the plaintiffs can establish their case by oral and documentary evidence.

7. Learned counsel on either side represented that the revision petitioners/plaintiffs have filed a transfer petition for transferring the suit from the file of XVII Judge, City Civil Court, Chennai to the file of some other Presiding Officer. Learned counsel for the respondent has no objection in transferring the suit from the file of XVII Judge, to some other Presiding Officer as ordered by this Court.

M. DURAISWAMY, J.,

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8. Having regard to the submissions made by the learned counsel on either side, the suit in O.S.No.5662 of 2007 pending on the file of the XVII Judge, City Civil Court, Chennai is transferred to the file of XI Judge, City Civil Court, Chennai and on receipt of the papers from the XVII Judge, the XI Judge, City Civil Court, Chennai is directed to dispose of the suit in O.S.No.5662 of 2007 on merits and in accordance with law within a period of two months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is dismissed.  
No costs. Consequently, connected miscellaneous petition is closed.

29.06.2015

Index : No  
Internet : Yes  
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To

1. The XVII Assistant Judge, City Civil Court, Chennai,
2. The XII Judge, City Civil Court, Chennai.

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