

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2656 of 2011
& M.P.No.1 of 2011

Siddapatti A.Srinivasalu Reddy .. Petitioner

Vs.

1.Pushpavalli
2.Devarajulu Reddy .. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 28.02.2011 made in I.A.No.14 of 2011 in O.S.No.264 of 2004 on the file of the District Munsif cum Judicial Magistrate No.1, Walaja, Vellore District.

For Petitioner : Mr.K.Thangavelu

For Respondents : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 28.02.2011 made in I.A.No.14 of 2011 in O.S.No.264 of

2004 on the file of the District Munsif cum Judicial Magistrate No.1, Walaja, Vellore District.

2. The petitioner is the defendant and respondents are the plaintiffs in O.S.No.264 of 2004 on the file of Subordinate Court, Vellore. The respondents filed the said suit, claiming relief mentioned there in on the ground that the first respondent is the wife of the petitioner and second respondent is the son of the petitioner. The said suit was partly decreed by judgment and decree dated 17.01.2005. Against the said judgment and decree, the petitioner filed A.S.No.2 of 2009. By the judgment and decree dated 13.05.2010, the learned First Appellate Judge set aside the judgment and decree dated 17.01.2005 made in O.S.No.264 of 2004 and remanded the suit to the Trial Court, directing to frame a specific issue whether the second respondent was born to the petitioner herein and both the petitioner and second respondent must under go D.N.A test to determine his parentage and issued other directions.

3. The respondent filed I.A.No.14 of 2011 for an order to direct for D.N.A test for the second respondent and petitioner herein and get a scientific report.

4. The petitioner filed counter affidavit and submitted that the Appellate Court has remanded the matter for fresh and trial did not direct the petitioner to submit for D.N.A. test and petitioner has filed appeal against the order of remand. The petitioner also stated that second respondent filed O.S.No.165 of 2002 on the file of the learned Subordinate Judge, Ranipet and I.A.No.53 of 2007 filed by the respondents for D.N.A. test was dismissed and in view of the same, the second respondent was estopped from seeking very same relief in the present suit.

5. The learned Judge, considering the order of remand dated 13.05.2010, where in the learned Appellate Judge has directed the petitioner and second respondent to undergo to D.N.A. test, allowed the application.

6. Against the order dated 28.02.2011 made in I.A.No.14 of 2011, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice has been served on

the respondents and their names are printed in the cause list, there is no representation either in person or through counsel.

8. From the materials available on record, it is seen that by judgment and decree dated 13.05.2010 passed in A.S.No.2 of 2009, the learned Appellate Judge has set aside the judgment and decree dated 17.01.2005 passed in O.S.No.264 of 2004 and remanded the matter to the Trial Court for the fresh trial, on certain condition. One of the condition is to subject the petitioner and second respondent for D.N.A. test. The petitioner has stated that he has filed appeal against the said judgment. He has not produced any particulars with regard to appeal filed by him and stay order, if any passed by the Appellate Court.

9. In view of the order of the learned Trial Judge allowing the application as per the judgment dated 13.05.2010 made in A.S.No.2 of 2009, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 28.02.2011.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
dm/gsa

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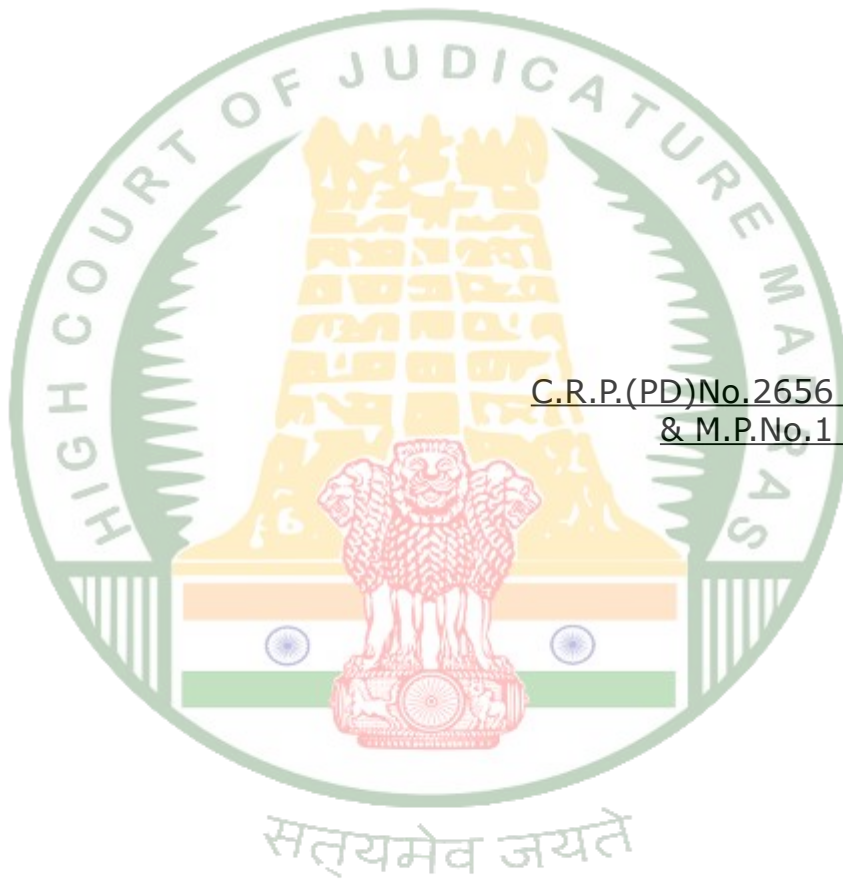
The District Munsif cum Judicial Magistrate No.1,
Walaja, Vellore District.



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V.M.VELUMANI, J.

dm



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