

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2019

Coram:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P.[PD]. No.4184 of 2010and M.P.No.1 of 2010

- 1.Krishnasamy Reddiyar (died)
- 2.Duraisamy Reddiyar
- 3.Kulasekaran
- 4.V.Vijayan
- 5.K.Venugopal
- 6.K.Boopathy

..

Petitioners

[petitioners 4 to 6 brought on record as LR's of the deceased 1st petitioner viz., Krishnasamy Reddiyar vide Court order dated 28.08.2018 made in C.M.P.Nos.4 to 6 of 2013 in CRP(PD).No.4184 of 2010]

versus

- 1.Rangaraju Reddiyar (died)
- 2.Anusuya
- 3.Sivabagyam
- 4.R.Vijayan
- 5.Poonkodi
- 6.Veni

Respondents

[respondents 3 to 6 brought on record as LR's of the deceased 1st respondent viz., Rangaraju Reddiyar vide Court order dated 28.08.2018 made in C.M.P.Nos.1 to 3 of 2013 in CRP(PD).No.4184 of 2010]

PRAYER : Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.10.2010 made in I.A.No.654 of 2010 in O.S.No.664 of 2006 on the file of the learned Principal District Munsif, Namakkal.

For Petitioners : Mr.T,Dhanyakumar
For Respondent No.2 : M/s.M.Sudhakar
For Respondent Nos.3 to 6 : M/s.Babu Rangasamy

ORDER

This Civil Revision Petition has been filed, as against the order of the trial Court passed in I.A.No.654 of 2010 in O.S.No.664 of 2006 in dismissing the application filed for reopening the case, in order to send the original Will for comparison with Ex.B.16 to compare the thumb impression of the testatrix, the trial Court has dismissed the application that there is no point in comparing the original with xerox.

2. The learned counsel appearing for the revision petitioners pointed out that the exhibit number has been wrongly typed in the application instead of Ex.B9 it has typed as Ex.P8 and only on that ground, the trial Court has dismissed the application.

3. Heard the learned counsel appearing for the respondents.

4. The main allegation appears to be that the petitioners wants to compare the thumb impression of the testatrix. The Original Will was notarised before the Notary Public and the register maintained by him was marked as Ex.B16 where the thumb impression of the testatrix said to be available. Since

the suit itself for declaration and the Will is a subject matter, it will have an effect to decide the rights of the parties, I am of the view that to establish the substantial right, the admitted Will and the disputed document has to be compared by an Expert.

5. Therefore, the order of the trial Court passed in I.A.No.654 of 2010 in O.S.No.664 of 2006 dated 08.10.2010 is hereby set aside and the revision petitioners are directed to file an application to send the documents to the Expert, within a period of ten days from the date of receipt of a copy of this order. The trial Court shall pass orders and appoint the Commissioner to take out the documents to the Expert to get the opinion and thereafter, proceed the suit as expeditiously as possible, without any further delay.

6. In the result, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

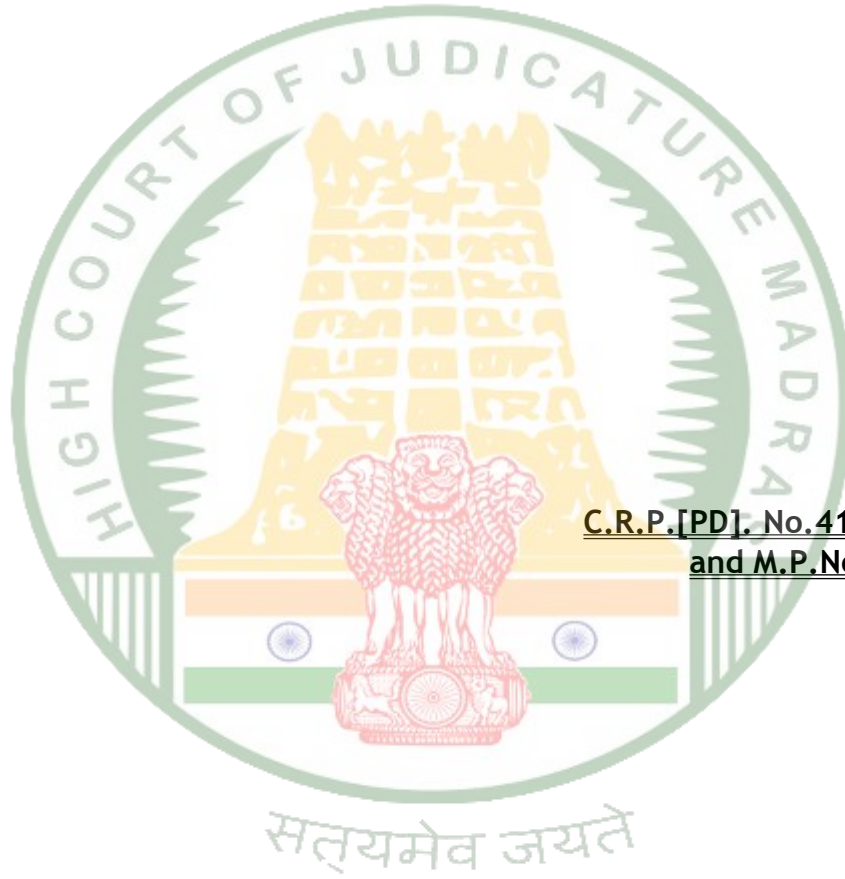
27.02.2019

Speaking order / Non Speaking order
Index : Yes / No
Internet : Yes
sri

To
The Principal District Munsif,
Namakkal.

N.SATHISH KUMAR, J.,

sri



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and M.P.No.1 of 2010

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