

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 19.02.2019

**CORAM :**

**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR**

**C.R.P. (PD) No.592 of 2019 &**

**C.M.P.No.3969 of 2019**

R.Manohar

.. Petitioner

Vs.

1. Mr.R.Sivachandiran
2. M/s.R.M.Properties, Dealer in Real Estate.
3. M/s.CTK Travel & Tours, Travel Agent
4. Mr.J.K., Dealer in Readymade Clothes
5. M/s.Sastha Technologies
6. M/s.Abi Computers, Computer Dealer
7. Sai A.c. Works, Volatas Dealer
8. Fitness World Gymnasium Equipments
9. Classic Digital Portrait, Photo Shop
10. Reliance Mutual Fund

(Respondents 2 to 10 are in possession of shops  
in Malli Mall, Adavaith Ashramam Road,  
Fairlands, Salem – 16)

11. Repco Home Finance Ltd.  
1/5 Shanthi Plaza, Brindavan Road,  
Opposite to Ponnusamy Gounder,  
Kalyana Mandapam, Fairlands, Salem.

.. Respondents

**PRAYER:** Civil Revision Petition filed under 227 of Constitution of India against the Fair and Final Order dated 12.10.2018 made in I.A.No.182 of 2015 in O.S.No.210 of 2013 on the file of the II Additional District Judge, Salem.

For Petitioner : Mr.S.Mukunth

For Respondents : Mr.D.Shivakumaran

### **ORDER**

This revision has been filed against the Order of the trial Court allowing the application filed to send the disputed Will to compare the same with the admitted signature of the testatrix found in the loan document executed by her.

2. It is the main contention of the learned counsel for the revision petitioner that the document has not been marked in evidence, the Will has to be proved independently as per Section 68 of the Indian Evidence Act and the other admitted documents have also not been brought on record. Therefore, the trial Court without admitting those documents and evidence let in, ought not to have allowed the application to send the document to the expert.

3. The learned counsel for the respondent submitted that in order to avoid any delay, the expert opinion is required. Hence, the Order of the trial Court does not require any interference.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and perused the materials available on record.

5. The suit itself has been filed by one of the brother against the defendants. The first defendant is the brother of the plaintiff. It is the case of the first defendant that his mother left unregistered Will. Whereas it is contended by the plaintiff that the Will is a forged one and the signature found in the Will has to be compared with the admitted signature of the testatrix available in the loan document. No doubt, the validity of the Will can be seen only at the time of evidence. The Will has to be proved in the manner known to law. Mere expert opinion will not be a conclusive proof in deciding the validity of the Will. But, at the same time, I am of the view that mere obtaining expert opinion will enable the Court to take a decision on the Will for some extent.

6. Therefore, taking into consideration of the fact that the Will has not been marked and the documents also has not been filed, I am of the view that mere getting expert opinion will not cause any prejudice to the parties to the suit, since the burden lies on the propounder of the Will to prove the same. I am of the view that till the evidence is let in and the Will is admitted in the evidence and attesting witness is examined, the expert opinion that may be received by the Court, need not be given to any of the parties in the suit and the expert opinion shall be kept in a sealed cover till the evidence is adduced by the propounder of the Will, to the prove the Will as per law. Only after such evidence, is adduced to prove the Will, the Court can issue copies of the expert opinion to both sides.

Thereafter, it is open to the parties to examine the expert to substantiate his report.

7. With the above observations, this revision is disposed of and the trial Court shall send the Will along with the admitted signature of the testatrix which is said to be available in the loan documents executed by her, after obtaining the documents from the bank. Consequently, the connected miscellaneous petition is closed. No cost.

**19.02.2019**

vrc

To

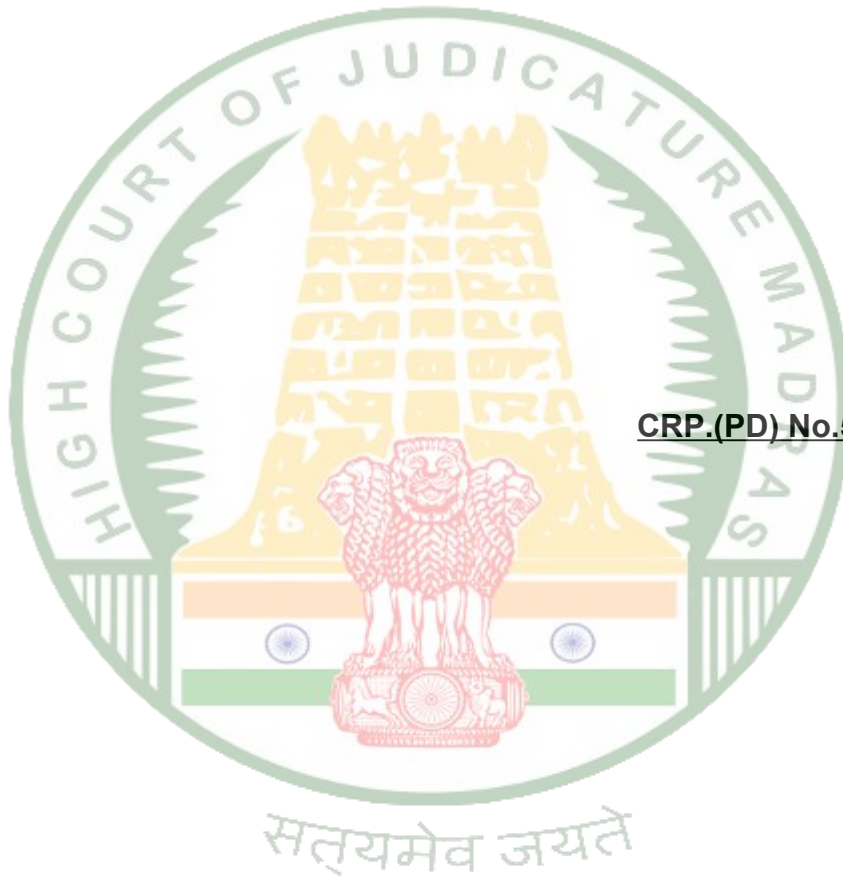
The II Additional District Judge,  
Salem.



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**N.SATHISH KUMAR, J.**

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