

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) No. 1980 of 2019
and C.M.P.No.12871 of 2019

1. M.Thangamariammal
2. M.Thangapriya
3. M.Anitha
4. M.Priyanka
5. M.Arunjuna

... Petitioners

Vs.

A.Rajammal (Died)

1. V.Chellapappa
2. H.Ramasamy
3. R.Kamaraj
4. R.Sekar
5. R.Chinna Krishnan
6. R.Ramachandran
7. R.Thagaraj
8. R.Kumar

.... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.03.2019 passed in I.A.No.557 of 2018 in Lr.Admn.O.P.No.142 of 2007 on the file of the Principal District Judge, Tiruvallur.

For Petitioners : Mr.A.V.Arun

For Respondents : Mr.M.Mahalakshmi

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ORDER

The petition filed before the trial Court for recording the evidence of the Advocate, who prepared the Will through an Advocate Commissioner was rejected on the ground that the practising Advocate cannot appear before the Court and let in evidence.

2. Now that, the learned counsel appearing for the petitioners before this Court would submit that the learned Senior Advocate, who drafted the Will, has restricted his practise and that he is aged about 78 years. Further, it is brought to the notice of this Court that he lost his wife yesterday.

3. Mr.Elango, learned counsel appearing for the respondents would submit that this was not the submission made before the trial Court, otherwise, they would have accepted for a convenient arrangement fixing the date with the witness.

4. The submissions made by both the parties are recorded. This Court is of the considered opinion that the witness being a Senior Citizen and also Senior Advocate by profession, compelling him to expose himself to Covid-19 conditions, by travelling from Chennai to Tiruvallur, to let in evidence is not reasonable. In the given circumstances, the order passed by the trial Court is set aside and an Advocate Commissioner is appointed for the purpose of examining the witness. The Advocate Commissioner shall record the evidence of the witness in the presence of both the counsel. The learned counsel for the respondent is permitted to cross examine the witness in the presence of the Advocate Commissioner after fixing a convenient date with the witness/Senior Advocate. The counsel for both the parties shall co-ordinate between themselves by fixing a date and complete the evidence of the witness, within a short span.

5. By consent of both the parties, Mr.A.J.Jawad, Advocate, is appointed as Advocate Commissioner to record evidence. The Commissioner is directed to fix up a convenient date and time with Mr.S.Subbiah, learned Senior Advocate, who has drafted the Will and record his evidence in the presence of both the sides and submit a report before the learned Principal

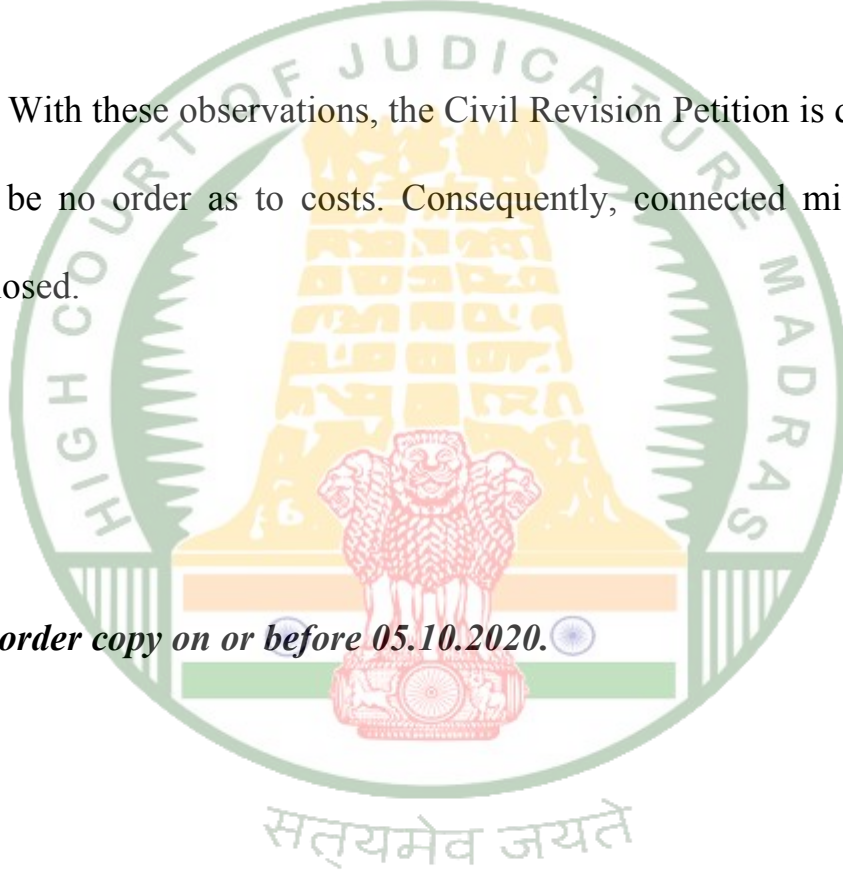
District Judge, Tiruvallur, preferably within a period of one month from today. After filing of the report of the Advocate Commissioner, the trial Court shall proceed further. The remuneration to the Advocate Commissioner is fixed at Rs.50,000/- (Rupees Fifty thousand only) payable by the petitioner.

With these observations, the Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

29.09.2020

asi/ms

Note: Issue order copy on or before 05.10.2020.



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To

The Principal District Judge,
Tiruvallur.



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CRP (PD) No.1980 of 2019

M.GOVINDARAJ, J.

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