

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP.(NPD).No.3203 of 2015
and
MP.No. 1 of 2015

D. Jayapal Naidu

.. Petitioner

Vs.

1. M. Viswanathan

2. R. Ramamoorthy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 21.01.2015 made in I.A No.92 of 2011 in S.O.P No. 1 of 2010 on the file of the Principal District Judge, Vellore.

For Petitioner : Mr. R. Balasubramanian

For Respondents : No Appearance

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order dated 21.01.2015 made in I.A No.92 of 2011 in S.O.P No. 1 of 2010 on the file of the Principal District Judge, Vellore.

2. Brief facts of the case is as follows :-

The petitioner's brother Nallaiah Naidu and his wife Padmavathy Ammal had no children. They possessed properties acquired out of their own income. The last rite ceremony of the deceased Nallaiah Naidu was done by the petitioner's elder son J. Moorthy. When his wife Padmavathy Ammal died, the respondents performed her last rite ceremony, stating that they are the elder sons of the deceased. Learned counsel for the petitioner stated that after the death of the petitioner's brother on 04.06.2005, his wife was enjoying all the movable and immovable properties. The 1st respondent is the son of the deceased Padmavathy Ammal's sister and the 2nd respondent is her brother's son and that they broke open the bureau and have taken away about 200 sovereigns of jewels. He further states that the respondents, with the created forged documents, are trying to dispose of the properties for

'unjust enrichment'. Hence, the petitioner has filed a suit in O.S. No.203 of 2009 for declaration, injunction and permanent injunction. Pending the said suit, the respondents filed Succession O.P. No. 1 of 2010 and had obtained the Succession Certificate. Aggrieved by the same, the petitioner filed I.A. No.92 of 2011 to set aside the Succession Certificate but the same was dismissed. Against the same, this revision petition has been filed before this Court.

3. According to the petitioner, the petitioner filed I.A. No.92/2011 and his brother's son P. Vijay Kumar Naidu filed I.A. No.02/2012, to revoke the Succession Certificate issued by the Court on 03.06.2010. The lower court had dismissed the petitions by a common order, without giving any opportunity to defend their case, though the learned counsel for the petitioners therein were present. In fact, the presence of the learned counsel for the petitioner in both the Applications have been marked in the cause title of the order dated 21.01.2015, whereas in page 3, it has been observed as follows :

“Except the pleadings, no oral evidence was adduced and no documents were submitted by both the petitioners. Even, the

petitioners had not appeared before this Court to put forth their respective arguments. On the other hand, the respondents appeared and submitted their arguments. It is also obvious that sufficient opportunities were duly extended to both the petitioners. They have not turn back to the Court to substantiate their arguments. Thereby, I am not inclined to entertain these petitions and accordingly, these petitions deserves to be dismissed”

According to the petitioner, the court below had erroneously dismissed the Interlocutory Applications, as if the petitioner has not appeared and put forth his arguments before the court.

4. Though notice was served to the respondents and name printed in the cause list, none appeared on behalf of the respondents.

5. On perusal of the order dated 21.01.2015, it is seen that one Mr. J. Sridharan, the learned counsel had appeared for the petitioner in I.A. No.92/2011 and one K.R. Ravi for the petitioner in I.A. No.02/2012. But the court below had stated in its order that none appeared for the petitioners and that they have not put forth their

respective arguments in the said applications, inspite of sufficient opportunities given to the petitioners therein. It is seen from the order that the said fact is contrary. Hence, in the interest of justice, it would be appropriate for the lower court to decide the issue on merits, after providing an opportunity to the petitioner.

6. Therefore, this Court is inclined to set aside the order dated 21.01.2015 made in I.A No.92 of 2011 in S.O.P No. 1 of 2010 on the file of the Principal District Judge, Vellore and remand it, to be decided by the Court below after providing an opportunity to the parties concerned, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

7. The Civil Revision Petition is allowed. Consequently, the connected M.P is closed. No order as to costs.

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Index: Yes/No

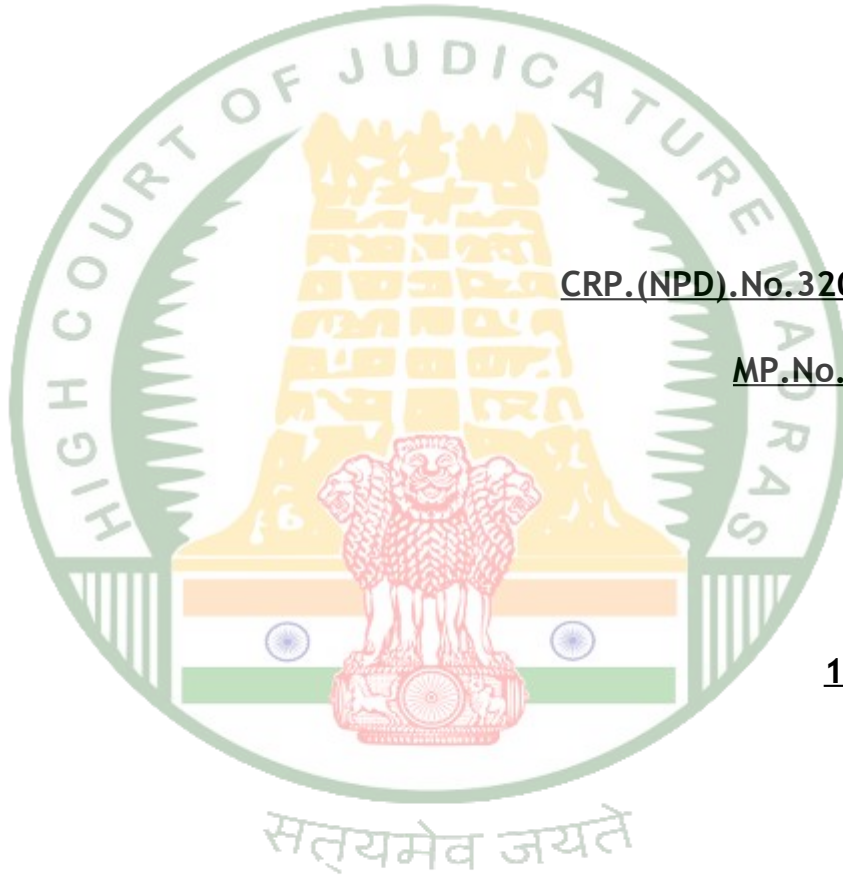
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To

The Principal District Judge, Vellore.

D. KRISHNAKUMAR J.

avr



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