

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

**C.R.P.(PD) Nos. 161 & 203 of 2018
and CMP Nos. 936 & 1161 of 2018**

CRP (PD) No.161 of 2018

K. Janakaraj Petitioner

Vs

R.Kondasamy Naidu

1. K.Selvaraj
2. K.Jayabal
3. K.Jayaraman
4. Santhamani
5. P.Santhamani
6. K.Jayaprakash

..... Respondents

CRP (PD) No.203 of 2018

K.Selvaraj Petitioner

Vs

R.Kondasamy Naidu

1. K. Janakaraj
2. K.Jayabal
3. K.Jayaraman
4. Santhamani
5. P.Santhamani
6. K.Jayaprakash

..... Respondents

Prayer in CRP (PD) No.161 of 2018 :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.11.2017 made in I.A.No.853 of 2016 in O.S.No.71 of 2014 on the file of the learned III Additional District and Sessions Court, Coimbatore.

Prayer in CRP (PD) No.203 of 2018 :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.11.2017 made in I.A.No.176 of 2017 in O.S.No.61 of 2012 on the file of the learned III Additional District and Sessions Court, Coimbatore.

In CRP (PD) No.161 of 2018

For Petitioner : Mr.M.Ashwin Kumar
for M/s.Sarvabhauman Associates
For R1, R2, R5 & R6 : No appearance
For R3 : Mr.P.Ravi Shankar Rao
For R4 : Mr.L.Mouli

In CRP (PD) No.203 of 2018

For Petitioner : Mr.C.Ravichandran
For R1, R2, R4 to R6 : No appearance
For R3 : Mr.P.Ravi Shankar Rao

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decreetal order dated 03.11.2017 made in I.A.No.853 of 2016 in O.S.No.71 of 2014 and I.A.No.176 of 2017 in O.S.No.61 of 2012 on the file of the learned III Additional District and Sessions Court,

Coimbatore, thereby dismissing the petitions to implead the 6th and 7th respondents as party to the suit.

2. The petitioner in CRP (PD) No.161 of 2018 filed a suit in O.S.No.71 of 2014 for the following prayers :-

“a. to declare that the declaration deed dated 30.01.1996 executed by the defendant as true, valid and binding on the defendant and for a consequential relief of permanent injunction restraining him from withdrawing his share of the amount awarded in LAOP No.120 of 1999 on the file of the I Additional Sub Court, Coimbatore.

b. for permanent injunction restraining the defendant from withdrawing the plaintiff 1/5th share of award amount in LAOP No.120 of 1999.

c. directing the defendant to pay the costs of the suit ; and

d. granting such further and other reliefs as the Honourable Court may deem fit and proper in the circumstances of the case.”

3. The case of the petitioner is that the ancestral property, belonged to the father, was acquired by the Government and the compensation of the amount was deposited into the credit of LAOP

No.120 of 1999. His father had executed a declaration deed dated 30.01.1996 confirming $\frac{1}{2}$ share of the amount as the petitioner's share in the award amount. Besides that, the petitioner is entitled to have $\frac{1}{5}$ th share in the award amount. Thereafter, his father joined with the hands of other sons viz., 3rd and 4th respondents and withdraw the amount, which was deposited in the LAOP No.120 of 1999 and deposited a separate account along with the 4th respondent. Out of the amount deposited by his father transferred a sum of Rs.45,00,000/- in favour of the 4th respondent and a sum of Rs.50,00,000/- in favour of the proposed 6th respondent herein. Simultaneously, his father also transferred a sum of Rs.12,00,000/- in favour of the proposed 7th respondent herein. Therefore, the petitioner filed a petition to implead the 6th and 7th respondents as party to the suit.

4. Admittedly, the 6th and 7th respondents are not family members of the petitioner. The case of the petitioner is that the declaration deed dated 30.01.1996 has to be declared as true and valid one. If it is declared then the award amount, which was already withdrawn by his father, in which, he is entitled to have $\frac{1}{2}$ share and $\frac{1}{5}$ th share from the remaining amount. Since his father died, pending the suit.

5. That apart, the proposed 6th and 7th respondents are not the legal heirs of his father. There might be so many factors to transfer the said amount by his father to proposed parties. If at all the petitioner ought to recover the said amount, he has to initiate separate proceedings for recovery of money as against the proposed parties. In the present suit, they are absolutely unnecessary parties and the Court below rightly dismissed the petition to implead themselves as parties to the suit.

6. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the CRP (PD) No.161 of 2018 stands dismissed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

7. The petitioner in CRP (PD) No.203 of 2018 filed a suit in O.S.No.61 of 2012 for the following prayers :-

“a. for the division of the amount of Rs.1,47,09,945/- into five equal shares and allotment of Rs.29,41,989/- being 1/5th share to the plaintiff ;

b. for permanent injunction restraining the 1st defendant from withdrawing Rs.29,41,989/- in LAOP No.120 of 1999 being the plaintiff's share amount

c. directing the defendant to pay the costs of the suit ; and

d. granting such further and other reliefs as the Honourable Court may deem fit and proper in the circumstances of the case.”

8. The case of the petitioner is that the property, belonged to their family, was acquired by the Government and the compensation amount was deposited to the credit of LAOP No.120 of 1999. The petitioner and all the family members are co-parcener and as such, he is entitled to have 1/5th share in the award amount. Thereafter, his father joined with the hands of other sons viz., 3rd and 4th respondents and withdraw the amount, which was deposited in the LAOP No.120 of 1999 and deposited a separate account along with the 4th respondent. Out of the said amount, he transferred some amount in favour of the proposed respondents i.e., 6th and 7th respondent, as stated in the earlier order, the proposed respondent is not a legal heir of his father and absolutely there are unnecessary to the present suit. If at all there is any grievance against the respondents 6 and 7 in respect of recovery of money, the petitioner ought to have filed a separate suit for recovery of money. Therefore, the Court below rightly dismissed the petition.

9. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the CRP (PD) No.203 of 2018 stands dismissed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

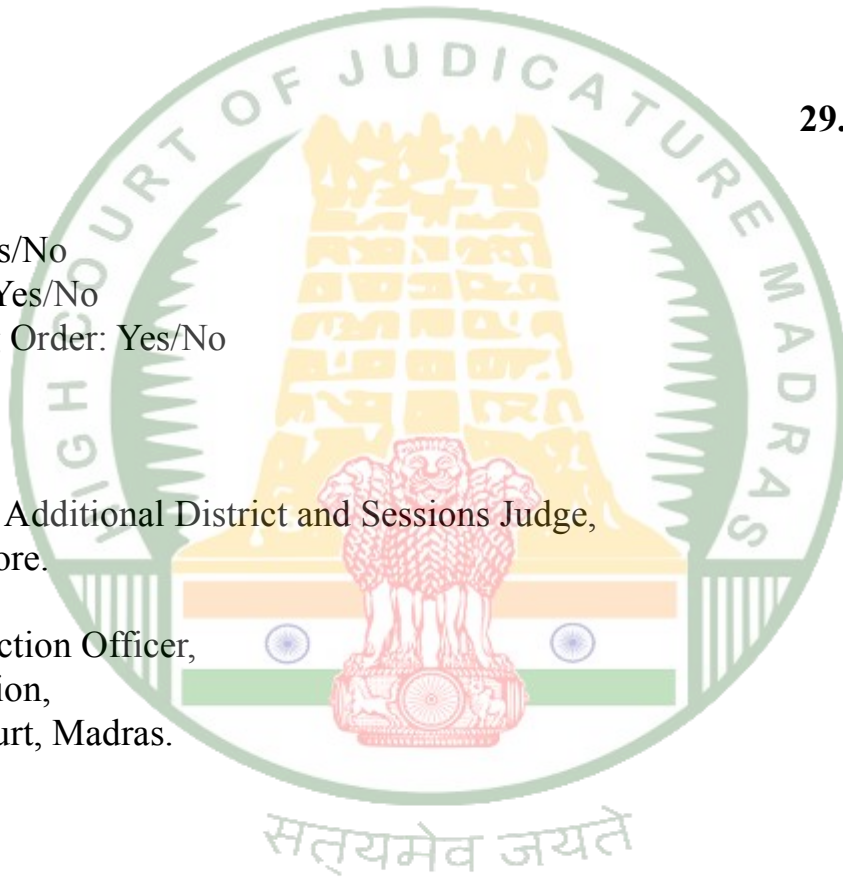
29.07.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To

1.The III Additional District and Sessions Judge,
Coimbatore.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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G.K.ILANTHIRAIYAN.J,

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