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C.M.P.No7035 of 2022 in
C.M.A.Sr.No.38801 of 2022

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P.T.ASHA, J.,

The deceased Sengodan has not only left behind two wives but also a ongoing litigation between them. This petition is filed seeking to leave to the petitioners, who are the 3rd wife and her son, to prefer a civil miscellaneous appeal against the judgment and decree passed in M.C.O.P.No.281 of 1998 dated 31.01.2006 on the file of the Motor Accident Claims Tribunal (I Additional District Court), Salem.

2. The brief facts are as follows:

(i) The deceased Sengodan is stated to have 3 wives. He was married to one Kannammal, through whom he had two daughters, Senthamarai and Gangeswari. The said Senthamarai is stated to have died long ago. After the death of Kannammal, the said Sengodan married the first petitioner and through her, the second petitioner was born. The first respondent, Palaniammal, on the other hand, would contend that she was married to Sengodan after the death of Kannammal and she was blessed with two children, the respondents 2 and 3 herein.



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(ii) While so, Sengodan died in a road accident on 27.01.1998 and two claim petitions were filed. One by the petitioners, i.e. M.C.O.P.No.1450 of 1999 and the other by the respondents 1 to 3 herein, which is M.C.O.P.No.281 of 1998. Both the petitions were tried together and a common award was passed on 31.01.2006, in which, the respondents 1 to 3 were held to be the legal heirs of the deceased Sengodan. The claim petition filed by the respondents 1 to 3 was allowed and the claim petition filed by the petitioners herein was dismissed on the ground that they had not produced any document to prove that they were the legal heirs of the deceased Sengodan. Against the dismissal of M.C.O.P.No.1450 of 1999, the petitioners had filed C.M.A.No.1270 of 2007 before this Court and by order dated 26.09.2018, the order passed by the Tribunal was confirmed. Against the dismissal of appeal, the petitioners had filed a Review Application (SR).No.22977 of 2021.

(iii). The order in M.C.O.P.No.281 of 1998 was not challenged and it is informed by the learned counsel appearing on behalf of the respondents 1 to 3 that the award amount has been deposited and withdrawn by the respondents 1 to 3. While so, the petitioners herein had moved this petition seeking the leave of this Court to file an appeal against the order in M.C.O.P.No.281 of 1998.



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3. The order in M.C.O.P.No.281 of 1998 had attained finality with the amounts being withdrawn by the respondents 1 to 3 herein. The learned counsel appearing for the petitioners would submit that they do not want to claim any right to the award amount, but they seek to have the appeal reopened only on the ground that the suit filed by them for declaration that they were the legal representatives of the deceased Sengodan would be effected by the order in M.C.O.P.No.281 of 1998.

4. This argument is rather strange, particularly, when the appeal filed by the petitioners against their claim petition was dismissed on the ground that no legal heirship certificate was produced by the petitioners. Therefore, the argument that the order in M.C.O.P.No.281 of 1998 would work against them is to say the least puerile. The remedy available to the petitioners is only to move a civil suit for declaration, which they have already undertaken.

5 In these circumstances, there is no necessity to reopen the claim, which has already attained finality. Accordingly, this civil miscellaneous petition seeking leave is dismissed.

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