



C.R.P.(PD)(MD) No.264 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD) No.264 of 2020

Thangamani

... Petitioner/Petitioner/
3rd Respondent/3rd Party

Vs.

1.G.Thangavel

... 1st Respondent/1st Respondent/
Petitioner/3rd Party

2.The Special Tahsildar (Land Acquisition),
Chettinaickenpatti Scheme,
Dindigul.

3.Ganesan

... Respondents 2 & 3/
Respondents 2 & 3/
Respondents 1 & 2/Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order dated 27.01.2020 passed in I.A.No.128 of 2018 in I.A.No.26 of 2013 in L.A.O.P.No.44 of 1990 on the file of the Principal Sub Court, Dindigul.

For Petitioner

:

Mr.H.Lakshmi Shankar



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For R2 : Mr.N.Ga.Natraj
Government Advocate
For RR1 & 3 : No appearance

ORDER

This civil revision petition is directed against an order dated 27th January, 2020 passed in I.A.No.128 of 2018 in I.A.No.26 of 2013 in L.A.O.P.No.44 of 1990 on the file of the Court of the Principal Subordinate Judge, Dindigul.

2.1. The brief facts that are relevant for the disposal of this civil revision petition are as under:

2.2. Certain landed properties belonging to the grandmother of the petitioner and Respondent No.1 herein were acquired by the Government and the compensation amount was deposited into the credit of L.A.O.P.No.44 of 1990. After the demise of the grandmother, Respondent No.1 herein stated to have filed a Cheque Petition seeking permission to withdraw the said amount in deposit by making a claim under a Will said to have been executed by the grandmother of the petitioner and Respondent No.1 in I.A.No.26 of 2013. The petitioner herein, disputing the said Will set up by Respondent No.1 and



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also claiming a right over the family properties and claiming the same as ancestral properties, filed a suit in O.S.No.169 of 2004 on the file of the Additional District Court, Dindigul, seeking partition. The said suit is stated to have been partly decreed and aggrieved by the same, the petitioner herein filed A.S.(MD) No.153 of 2016 before this Court and the same is pending.

3. At that stage, the petitioner having come to know about the pendency of L.A.O.P.No.44 of 1990 and the application filed by Respondent No.1 herein in I.A.No.26 of 2013, filed counter affidavit in the said interlocutory application and also filed I.A.No.128 of 2018 under Section 10 of the Code of Civil Procedure seeking stay of all further proceedings pending disposal of A.S.(MD) No.153 of 2016 pending before this Court. The said application filed under Section 10 was dismissed by the learned Principal Subordinate Judge, Dindigul. Aggrieved by the same, the petitioner approached this Court by filing the present revision petition.

4. On being asked, learned counsel for the petitioner fairly submitted that the amount of compensation, which is in deposit to the credit



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of L.A.O.P.No.44 of 1990 is not the subject matter of O.S.No.169 of 2004 nor A.S.(MD) No.153 of 2016. If that be the case, the very basis for filing an application under Section 10 of Code of Civil Procedure is non-existing.

5. It is only in case, if the same issue is pending for consideration in an earlier proceedings and in case where the very same issue arises for consideration in subsequent proceedings between the parties, the subsequent proceedings can be stayed in exercise of power under Section 10 of the Code of Civil Procedure by the very same Court where the subsequent proceedings are pending. In the case on hand, admittedly, the compensation amount, which is the subject matter of L.A.O.P.No.44 of 1990 is not the subject matter of O.S.No.169 of 2004 nor A.S.No.(MD) No.153 of 2016. Therefore, the very application filed under Section 10 of the Code of Civil Procedure is not maintainable. Hence, this Court does not find any error or illegality in the order passed by the learned trial Court.

6. Be that as it may, insofar as the contention of the learned counsel for the petitioner on the ground that the petitioner herein, who is the



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granddaughter of the original petitioner in L.A.O.P.No.44 of 1990, do have a claim over the compensation in deposit to the credit of the said L.A.O.P.No. 44 of 1990 is concerned, it is for the petitioner to workout her remedies by filing appropriate application in the said L.A.O.P.No.44 of 1990. If at all the claim of Respondent No.1 herein for issue of a cheque in respect of the deposit amount available in L.A.O.P.No.44 of 1990, basing upon a Will said to have been executed by his grandmother is not acceptable to the petitioner, it is for the petitioner to contest the same. If the Will set up by Respondent No.1 is also the subject matter of O.S.No.169 of 2004 and any findings are recorded on the validity or otherwise of the said Will, it is always open for the petitioner to bring all such facts to the notice of the Court concerned in L.A.O.P.No.44 of 1990 and pursue her remedies.

7. This Civil Revision Petition is dismissed subject to the observations made above. No costs.

NCC : Yes/No
Index : Yes/No
Internet : Yes
ABR

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MUMMINENI SUDHEER KUMAR, J.

ABR

To

The Principal Sub Judge,
Dindigul.

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