

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

Date of Reserving the Order	Date of Pronouncing the Order
06.02.2015	10.02.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No. 25915 of 2014

Seetha@Seethalakshmi Petitioner

Vs

1.The District Collector,
Erode District,
Erode.

2.The Revenue Divisional Officer,
Erode.

3.The Tahsildar,
Office of the Tahsildar,
Erode.

4.Mrs.Pachiammal Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the first respondent dated 02.05.2014, passed in Pa.Mu.10826/2014/K3 and quash the same and direct the respondents 1 to 3 to issue the legal heirship Certificate in petitioner favour as per the order 05.06.2013 passed in Pa.Mu.10930/2013/A7.

For petitioner .. Mr.M.K.Kabir Senior counsel for
Mr.V.S.Senthilkumar

For Respondent .. Mr.M.L.Chandran G.A for RR1to3

Mr.S.Jayakumar for R4

O R D E R

The petitioner seeks for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the first respondent dated 02.05.2014, and to direct the respondents 1 to 3, to issue the legal heirship certificate in terms of the order dated 05.06.2013, passed by the third respondent, by which the petitioner was recognized as a legal heir of late P.K.Nagaraj s/o Late Kailasa Mudaliyar.

2. The third respondent by proceedings dated 05.06.2013, issued a legal heirship certificate mentioning the name of the petitioner as the wife of late P.K.Nagaraj and she along with two minor children as his legal heirs. Aggrieved by such order, the fourth respondent, step sister of P.K.Nagaraj preferred an appeal before the second respondent. The second respondent by order dated 25.02.2014, allowed the appeal and set aside the legal heirship certificate issued by the third respondent to the petitioner. The petitioner's appeal before the first respondent, District Collector was rejected by order dated 02.05.2014 and challenging the order passed by the District Collector, the petitioner is before this Court.

3. Elaborate submissions were made by Mr.M.K.Kabir, Senior counsel appearing for the petitioner, Mr.Jayakumar, learned counsel for the fourth respondent and Mr. M.L.Chandran, learned Government Advocate appearing for the respondents 1 to 3 and voluminous records were placed by either side. During the course of argument, it was submitted on behalf of the petitioner that the complaint/grievance of the fourth respondent is that she was not afforded opportunity before the Tahsildar issued the legal heirship certificate and if the fourth respondent requires to be heard in the matter, the matter may be remanded to the Tahsildar, Erode for fresh consideration affording opportunity both to the petitioner as well as the fourth respondent. It is further submitted that based on the legal heirship certificate, the petitioner has substituted herself in the place of late P.K.Nagaraj in several criminal proceedings initiated by Mr.P.K.Nagaraj for recovery of money and therefore, if the petitioner is stated to be not the legal heir of Late P.K.Nagaraj, it would jeopardize her interest in those proceedings. Apart from the above submissions, the petitioner would contend that the orders passed by the respondents 1 and 2 were without full fledged enquiry and it is contrary to the facts, arbitrary, and prejudicial in nature. It is further submitted that the objection of the fourth respondent ought not to have been entertained by the respondents 1 and 2, since P.K.Nagaraj has acknowledged the petitioner's status as wife before Governmental and Quasi Governmental Authorities. It is further submitted that in the absence of any documentary proof adduced by the fourth respondent to substantiate her right that the Kailasa Mudaliyar was married to Seethayee and on the assertion of Kailasa

Mudaliyar and P.K.Nagaraj in the last Will and testament that only Deivanaiyammal and Thulasimani were the wives of Kailasa Mudaliyar, the cancellation of the legal heirship certificate issued on 05.06.2013 is illegal. Further, it is submitted that the claim of the fourth respondent is not bonafide and it is a false claim because of continuation of the proceedings under Criminal Law for dishonouring of cheques. Further it is submitted that the grant of legal heirship certificate by order dated 05.06.2013, was after full fledged enquiry and the concerned authority has given evidence to the said effect and consequently, the impugned order suffers from non-application of mind.

4. The learned counsel for the fourth respondent submitted that the claim made by the petitioner is false and she is not the wife of Late P.K.Nagaraj who is the younger brother of the fourth respondent. It is submitted that the fourth respondent's brother Late P.K.Nagaraj was murdered by the Writ Petitioner along with other accused persons on 20.04.2013 by administering poison and he was hurriedly cremated on 21.04.2013 without information to his close relatives. Based on the complaint given by the fourth respondent, a case has been registered in Crime No.313 of 2014, on the file of the Erode Town Police Station for offences under Sections 120B, 506(ii), 201 and 302 IPC. It is submitted that based on an earlier complaint lodged by the fourth respondent, a case has been registered in Crime No.49 of 2013, for offences under Sections 120B, 420, 463, 464, 465, 466, 467, 468 and 471 IPC and the same is pending investigation on the file of the Inspector of Police, District Crime Branch, Erode. It is further submitted that Sidhayee, the mother of the fourth respondent is the only wife of Late Kailasa Mudaliyar and record showing that she received widow pension establishes the same. It is submitted that the petitioner has filed O.S.No.481 of 2014, before the District Munsif Court, Erode for injunction and the Civil Court has not granted any injunction. It is submitted that the third accused in Crime No.49 of 2013 pending before the District Crime Branch is one Kumar @ Saravanakumar, who is the husband of the petitioner, who is absconding. It is further submitted that Siddaee, mother of the fourth respondent was the lawful wife of Kailasa Mudaliyar and the fourth respondent is the only daughter born through their wedlock. Since Kailasa Mudaliyar had no male issues through Sidayee, he married Deivanaiyammal and subsequently, Thulasiammal and P.K.Nagaraj was born to Thulasiammal. It is further submitted that on 14.09.1997, P.K.Nagaraj married Usha Nandhini at Erode and the fourth respondent being his sister used to visit Erode and stayed with Nagaraj. Due to difference of opinion between the spouse, Nagaraj filed a divorce petition against Usha Nandhini in HMOP NO.102 of 2002, and Usha Nandhini contended that P.K.Nagaraj was impotent and ultimately, the Court granted a decree of divorce on 17.04.2003. It is submitted that Usha Nandhini alone was the legally married wife of P.K.Nagaraj and P.K.Nagaraj is incapable of becoming a father.

Further, it is submitted that P.K.Nagaraj was a hail and healthy young man of 33 years and he was made a drunkard by the petitioner with an object to grab the properties of the P.K.Nagaraj with the help of one Mr.Gunasekaran who is a resident of Erode and false and fabricated document were created. It is further submitted that the petitioner was working as an Assistant in a beauty parlour and she had no income to purchase those properties at the relevant time. Further, it is submitted that the school records of K.Karthik the son of the petitioner clearly reveal that forgery has been committed by obtaining false birth certificate by forging the father's name of K.Karthik which was Kumar as Nagaraj, when the marriage between Nagaraj and Usha Nandhini was subsisting. Further, it is stated that the petitioner sold one Mahindra Scarpio vehicle owned by P.K.Nagaraj by forging his signature. Therefore, it is submitted that the petitioner is not the legal heir of P.K.Nagaraj and the case as projected by the petitioner is absolutely false and the documents produced by her are forged documents and the circumstances in which P.K.Nagaraj died is suspicious, he was hurriedly cremated by the petitioner and the father of the petitioner's children is not P.K.Nagaraj, but Kumar which is clearly evident from the school record and other records of the child. Hence, it is submitted that the respondents 1 and 2 rightly directed that the dispute can be resolved only before a Civil Court and revoked the legal heirship certificate granted by the third respondent by order 05.06.2013, which was done without any enquiry.

5. Heard the learned counsels appearing for the parties and perused the materials placed on record.

6. The learned counsels appearing for the petitioner and the fourth respondent have elaborately referred to the factual matrix. The petitioner claims herself to be the widow of P.K.Nagaraj and that she has two minor children. On the demise of P.K.Nagaraj, which is said to have occurred on 20.04.2013, the petitioner applied for legal heirship certificate before the third respondent. The application was submitted on 05.06.2013, and the certificate was granted on the same day. As far as the grant of the legal heirship certificate is concerned, the same could not have been issued without enquiry. It can be safely presumed that no enquiry could have been conducted, completed, report submitted and then orders passed on the same day. Therefore, the manner in which the third respondent has dealt with the application and issued the certificate raises serious doubt. The fourth respondent on coming to know of the fact that a certificate has been issued by the third respondent, preferred an appeal to the second respondent. In the appeal petition, the fourth respondent has set out all the facts and disputed the stand taken by the petitioner stating that she is the lawfully wedded wife of P.K.Nagaraj and placed documents for consideration before the second respondent. On notice being issued, the petitioner appeared and the Tahsildar who

issued the certificate and the subordinates in his officer were examined. The second respondent after considering the entire facts has recorded a finding that there is serious disputed questions raised by both parties and the same cannot be resolved by the Revenue and therefore, the petitioner should approach the Civil Court for necessary relief. Commenting upon the manner in which the third respondent passed the order, granting the certificate, it was pointed out that the application for legal heirship certificate was submitted on 05.06.2013, and on the same day, the certificate has been issued. It has been further pointed out that so far as income certificate and other similar certificate could be on the same date, but not in the case of a legal heirship certificate or property valuation certificate which could be done only after enquiry. Further after considering the oral evidence of the subordinates of the third respondent, the second respondent recorded a finding that there is no entry in the office records to show that an enquiry was conducted, objections were received and then orders were passed. Thus, the second respondent held that the issuance of the legal heirship certificate was vitiated and set aside the same. On appeal filed by the Writ Petitioner, the first respondent confirmed the order of the second respondent by considering the objections independently and observing that both parties have taken diametrically opposite stand and the second respondent rightly considered the evidence and came to the conclusion that the legal heirship certificate issued by the third respondent on the same date, when application was filed, without conducting any enquiry was erroneous and confirmed the order passed by the second respondent.

7. A legal heirship certificate issued by the Tahsildar is based on enquiry done with the claimants who claim to be the legal heirs, local enquiry etc. The nature of enquiry is summary, Invariably, statements are recorded from the people who have been examined and based on these records the Tahsildar issues the legal heirship certificate. Often complaints are received by the Tahsildar stating that one of the legal heirs have been omitted to be mentioned either wilfully or due to inadvertence and in such an event, the Tahsildar proceeds to ascertain the genuineness of the stand and if there is a serious contest as regards the heirship or the decree of heirship, then the only option available is to direct the parties to approach the Civil Court.

8. In the instant case, the certificate issued by the third respondent has been issued without any enquiry and the second respondent as a matter of fact has found that there is no entries in the relevant registers to substantiate that notice was issued, enquiry was conducted, objections were received and thereafter, orders were passed. In such circumstances, the order passed by the second respondent is fully justified.

9. In the preceding paragraphs, this Court has referred to the facts as stated by the petitioner and the fourth respondent. On a prima facie consideration, it is evident that there is serious dispute as regards the status of the petitioner who claims herself to be the widow of P.K.Nagaraj. *** It is contended that the fourth respondent is the step sister of P.K.Nagaraj** and her brother has been done to death and attributes it to the petitioner and her henchmen and Criminal case is also pending. In such circumstances and in the light of the reasons assigned by the respondents 1 and 2, there is no error in the orders passed by the respondents 1 and 2.

10. For all the above reasons, the petitioner has failed to make out a case for interference with the orders passed by the first respondent confirming the order passed by the second respondent. Accordingly, the Writ Petition fails and it is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst. Registrar (CO)
Dated : 16.02.2015

***Amended as per order dated
25.03.2015 made in M.P.No.1 of 2015
in W.P.No. 25915 of 2015
Sd/- Assistant Registrar (CS-II)
Dated : 31.03.2015**

/true copy/

Sub Asst. Registrar.

pbn

To

1. The District Collector,
Erode District, Erode.

To be substituted to the
order already despatched
on 18.02.2015

2. The Revenue Divisional Officer,
Erode.

3. The Tahsildar,
Office of the Tahsildar, Erode.

1 CC to the Government Pleader SR NO 7303

1 CC To Mr.V.S.Senthil Kumar, Advocate SR NO.17247

1 CC To Mr.S.Jayakumar, Advocate SR NO.16906

W.P. No. 25915 of 2014

km[co]
gp/16.2. PSI 01.04.2015