

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 9919 of 2011

ORDER:

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The present writ petition came to be filed questioning the jurisdiction of the second respondent in processing and conducting enquiry for deciding the legal heirs of late Narasamma and mutation of their names in the revenue records in respect of land to an extent of Ac.0.27 gts. in Sy.No.208/A2 situated at Jeerlapally Village, Jarasangam Mandal, Medak District.

The averments in the writ petition are as under:

One Balappa married Narasamma and they had no issues. The said Balappa owned Ac.0.27 gts in Sy.No.208/A2 situated at Jeerlapally village, Jarasangam Mandal, Medak District. Title deed and pattadar pass book were issued by the Tahsildar in favour of late Balappa. Subsequently in the year 2008, the said Balappa died leaving behind his wife Smt. Narasamma as his lawful legal heir, who inherited the said property. Thereafter the name of Narsamma was mutated in the revenue records in respect of the above said land and title deed and pattadar pass book were issued in her favour. On 27.11.2010 the said Narsamma died. It is stated that during her life time the said Narsamma executed an un-registered will dated 12.08.2010 bequeathing the said property in favour of the petitioner, who is her maternal uncle's son and as she was staying with the petitioner till her death. The petitioner performed all the religious rituals and the last rites of Narsamma.

On 22.01.2011 the petitioner made an application to the

second respondent for mutation of his name in the revenue records in respect of the said land. The second respondent issued a notice dated 02.02.2011 calling upon the petitioner to attend the enquiry but however no enquiry was conducted. It is stated that the Village Revenue Officer (fourth respondent) developed a grudge against the petitioner and without notice or enquiry set up a third party claim by issuing legal heir certificate in favour of one Bujjamma, the fifth respondent herein. The representation dated 11.03.2011 made by the petitioner to the first respondent was forwarded to the Revenue Divisional Officer, who in turn forwarded the same to the second respondent herein. The petitioner approached the second respondent on 11.03.2011 to recall the legal heir certificate issued in favour of the fifth respondent. The second respondent fixed the date of enquiry as 15.04.2011 and it is said that he is bent upon to decide the issue as to who the legal heirs of Narsamma are. Hence, the present writ petition came to be filed.

Fifth respondent filed counter affidavit denying the averments made in the writ petition. She submits that Narsamma adopted her as such she is entitled to the property as legal heir of late Narsamma. It is stated in the counter that though her adopted mother late Narsamma is alleged to have executed a will on 12.08.2010, but a copy of the said will is not filed before this Court. However, she disputes the authenticity and genuinity of the will, executed by late Narsamma. It is said that the second respondent is very much competent to cause enquiry under the provisions of R.O.R.Act.

Learned Government Pleader for Revenue submits that in view of the order of this Court in W.P.No.7430 of 2000 the

Tahsildar has no jurisdiction to issue a legal heir certificate and also decide as to who the legal heirs of Narsamma.

A perusal of the material on record would disclose that till date, the Tahsildar has not conducted any enquiry. It is only an apprehension that the Tahsildar is going to conduct an enquiry and pass orders deciding as to who the legal heirs of Narsamma are. The Government issued Memo bearing No.31346/Ser.II.2/2010 dated 25.10.2010 of Revenue (Ser.II) Department, directing all the Mandal Revenue Officers of the State to issue Family Membership Certificates to Government Employees/members of public in future clearly mentioning in the certificate the purpose for which such certificate is being issued viz., for receiving Government dues or for applying for Government Welfare Programs, as the case may be. Further, in W.P.No.7430 of 2000 this Court observed as under:

“In my considered opinion, the questions of fact and law cannot be the subject matter of an enquiry by the Mandal Revenue Officer for the purpose of granting legal heir certificate. There is no provision of law under which the Mandal Revenue Officer could have exercised such power to decide as to who are the legal heirs of the deceased. The question as to who are the legal heirs of the deceased may have to be decided by a competent Court of civil jurisdiction.”

From a reading of the said memo it is clear that the second respondent is not competent to issue the legal heir certificate. In view of the order of this Court referred to above and the Memo, the second respondent may not proceed with the enquiry to issue legal heir certificate. The dispute can only be decided by a civil Court after hearing the rival claims and not by the Tahsildar.

However, having regard to the circumstances stated above, the second respondent is directed not to conduct any enquiry to decide the legal heirs of the deceased Narsamma.

With the above direction, the writ petition is disposed of.
No costs.

Consequently, miscellaneous petitions, if any, pending in
this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

06.07.2015
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