

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.37214 of 2015
and
MP.No.1 of 2015

T.S.Renuka Devi
rep. by her guardian and next friend
K.Swaminathan ... Petitioner

vs.

The Tahsildar,
Mambalam - Guindy Taluk,
Chennai - 78. ... Respondent

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the respondent in proceeding bearing No.Na.Ka.E1/36132/2013 dated 05.12.2013 and quash the same and consequently direct the respondent to issue legal heir certificate to the petitioner Ms.T.S.Renuka Devi for the deceased Mrs.Parvathi, Widow of late Y.Ganapathy who had passed away on 15.09.2010 subject to any condition that may be imposed by this court.

For Petitioner : Mr.A.Sirajudeen

For Respondent : Mr.P.Sanjay Gandhi, AGP

ORDER

The petitioner has come up with the present writ petition challenging the order passed by the respondent dated 5.12.2013 and consequently directing the respondent to issue her a legal heir certificate of one Parvathi, Widow of late Y.Ganapathy, who had passed away on 15.09.2010, subject to any condition that may be imposed by this court.

2. The petitioner by name T.S.Renuka Devi is represented by one K.Swaminathan, who was appointed as her guardian by an order of the Principal Sessions Court, Chennai dated 12.09.2014 made in M.H.O.P.No.10 of 2014, since she is

mentally retarded person. One G.Parvathy, who was the aunt of the petitioner, had passed away on 15.09.2010 without any issues and her parents and husband predeceased her. The said Parvathi had a brother, who is none other than the father of the petitioner herein and who is her only surviving legal heir. Therefore, according to the petitioner, being class II legal heir, as per the Hindu Succession Act, 1956, she is entitled to succeed estate of the said Parvathi. Hence, she applied for legal heir certificate before the respondent on 29.10.2013. On receipt of the same, the respondent conducted enquiry and got satisfied that the petitioner is the sole legal heir of the said Parvathi, however, he rejected the petitioner's application on the ground that she is not the direct legal heir of the said Parvathi and instructed her to get the certificate through the process of court. Aggrieved over the said order, the petitioner is before this court with the present writ petition for the above stated relief.

3. Learned counsel for the petitioner submitted that though the respondent got satisfied that the petitioner is class II legal heir of G.Parvathi, however, by the impugned order, he denied to issue a legal heir certificate to the petitioner on the ground that she is not the direct legal heir of the said Parvathi. Therefore, the impugned order is unjust and liable to be set aside.

4. Heard the learned Additional Government Pleader appearing for the respondent.

5. Admittedly, Class I heirs of the said G.Parvathi predeceased her. It is not in dispute that the father of the petitioner is her only surviving legal heir. Therefore, as per the Schedule appended to the Hindu Succession Act, 1956, the petitioner being Class II legal heir, is entitled to succeed the property left out by the said Parvathi, if no other direct legal heir is available. In the enquiry, the respondent has also admitted the same, but, he refused to issue a certificate to the petitioner. In my considered view, the order so passed by the respondent is not sustainable and hence, the same is liable to be set aside.

6. Accordingly, the writ petition is allowed and the order dated 05.12.2013 passed by the respondent is set aside. The petitioner is permitted to submit a fresh application along with a copy of this order within a period of two weeks from the date of receipt of a copy of this order. On such submission, the respondent is directed to conduct enquiry by affording an

opportunity of personal hearing to the petitioner and pass appropriate orders with regard to the issuance of a legal heir certificate to the petitioner in accordance with law, within a period of six weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

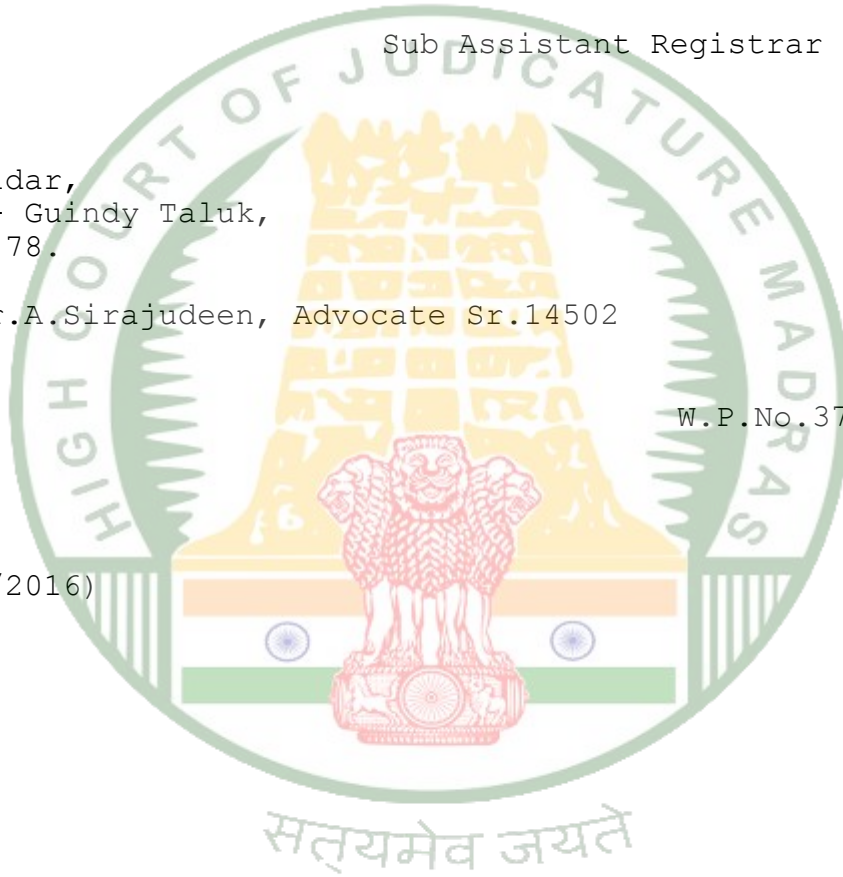
To

The Tahsildar,
Mambalam - Guindy Taluk,
Chennai - 78.

+1cc to Mr.A.Sirajudeen, Advocate Sr.14502

W.P.No.37214 of 2015

msm(CO)
srg(06/04/2016)



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