

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.28882 of 2016

G.Muniraj

Petitioner

Vs

The Tahsildar, Ayanavaram Taluk
25, United India Nagar,
I Main Road, Ayanavaram
Chennai-23

Respondent

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the Respondent to issue legal heir ship certificate of the Petitioner's father late C.K.Ganesan to the Petitioner in pursuance of the judgement and decree of declaration and direction passed by the II Assistant City Civil Judge, Chennai on 11.2.2016 in OS.No.6629 of 2015.

For Petitioner : Dr.R.Sampathkumar
For Respondent : Mr.A.N.Thambidurai, SGP

ORDER

In this Writ Petition, the Petitioner seeks for issuance of legal heir ship certificate of his deceased father based on the judgement and decree dated 11.2.2016 made in OS.No.6629 of 2015.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. It is a peculiar case filed by the Petitioner under the garb of mandamus. According to the Petitioner, his father died in the year 1957 and at that point of time, he was a minor. Thereafter, his mother also died in the year 1973. He has failed to obtain legal heir ship certificate on the death of either his father or the mother. Thereafter, he has filed a civil suit in OS.No.6629 of 2015, impleading the Tahsildar alone as the Defendant, for a mandatory injunction to issue legal heir ship certificate. The Tahsildar conveniently remained exparte

and hence, an exparte decree came to be passed only on the evidence of the Petitioner alone getting into the box and by filing an affidavit. The documents relied upon by the Petitioner before the trial court are (1) ration card, (2) adhaar card, (3) voters list and (4) death certificates of the father and mother.

4. At this stage, it is pertinent to state that before filing the Writ Petition, the Petitioner filed an application dated 23.8.2015 for transfer of patta before the Tahsildar, which was rejected by order dated 19.10.2015 on the ground that for issuance of legal heir certificate of his father who died in the year 1957, in the field enquiry, they were not able to trace out the other legal heirs of his late father and it is an appealable order. But, without questioning the same, the Petitioner has approached this Writ Petition under the garb of mandamus, based on the exparte decree only. Admittedly, no appeal has been filed before the concerned District Revenue Officer or the Revenue Divisional Officer as against the order of rejection of the Tahsildar. But, instead of filing an appeal against the order of the Tahsildar, he filed the said civil suit against the Tahsildar alone and on that score itself, the very suit filed by the Petitioner has to be deprecated.

5. This court has got every power under Article 227 of the Constitution of India to set aside the said exparte decree itself, as it is non-est in the eye of law. What could not be done under the law he has done by way of a civil suit. That being the case, under the shelter of exparte decree granted to the Petitioner by the Trial Court, he has now filed this Writ Petition. In normal courses, if it is a decree of a civil court, only an execution petition ought to have been filed, but the Petitioner did not chose to do so and instead, he filed the present writ petition under the guise of mandamus to consider and pass orders by way of a direction to issue a legal heir ship certificate and under which law such an exercise is permitted it is not known to law. If at all the Petitioner ought to have filed an execution petition before the trial court after the exparte decree being passed and even that has not been done.

6. In the case on hand, it is a prime property, which has not been taken care of by a particular person for more than 50 years. Suddenly, he filed a suit against the Tahsildar alone, seeking for issuance of legal heir ship certificate of a deceased person and thereafter, on the basis of the exparte decree, he wants to get the legal heir ship certificate in the Writ Petition, without filing an EP before the civil court. Suppose a person is available for all these 50 years in the said property, his right will be affected or a person who wants to

grab a land may utilise this procedure to do this. Therefore, such a kind of procedure to obtain a legal heir ship certificate by filing a civil suit after long gap of 50 years, where the Tahsildar alone is made as a party, for a death of a person long back in the year 1957, should be deprecated. Further, in this case even in the civil court he has not even put in any third party evidence to establish that he is the legal heir.

7. If at all the Petitioner wants to establish his right, first he has to establish his right in the civil suit, by adducing both oral and documentary evidence or through any other related persons to establish as to whether he is the legal representative of his deceased father. It is also not known as to how the Officer of the court below has passed such an exparte decree without any evidence on the side of the Defendant, who is only a Tahsildar and who conveniently remained exparte and without examining the related witnesses or any other witnesses to speak about the legal heir ship. The Officer should be aware of the fact that unless the Plaintiff proves his case or establishes his right through his relatives and on the basis of the documents, he should not have passed such an exparte order. Further, as against the order or rejection of application for transfer of patta, without exhausting the appeal remedy either before the District Revenue Officer or the Revenue Divisional Officer, the suit filed as such and the exparte decree passed thereon have to be deprecated.

8. In view of the above discussions and reasons, this Writ Petition is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

सतयमेव जयते
Sub Asst. Registrar.

Srcm
To:

The Tahsildar, Ayanavaram Taluk
25, United India Nagar,
I Main Road, Ayanavaram
Chennai-23

WEB COPY

2 The Principal Judge,
City Civil Court, Chennai

3 The District Collect,
Greater Chennai,
Chennai District.

4 The IInd Assistant,
City Civil Judge, Chennai

+1 CC to R. Sampathkumar, Advocate, Sr.No.47532

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NRJK (CO)
MD : 16/09/2016



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