



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.07.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Writ Petition (MD). No.12537 of 2016

M.Chinnaiah

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Madurai East,
Madurai.

... Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed in Mu.Mu.No.9521/15/A2 dated 26.05.2016 passed by the 2nd Respondent and quash the same as illegal and consequently directing the 2nd Respondent to issue the legal heir certificate to the Petitioner within the time stipulated by this Hon'ble Court.

For Petitioner :Mr.Babu Rajendran

For Respondents :Mr.S.Kumar

Addl. Government Pleader

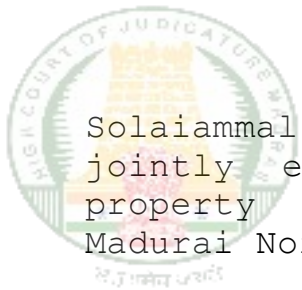
O R D E R

Heard both sides.

2. By consent, the main writ petition itself is taken up for final disposal.

3. No counter is filed on behalf of the Respondents.

4. According to the petitioner, his grandfather, Maruthan Samban was married to Mrs.Solaiammal and out of the wedlock, they were blessed with two sons viz., 1. M.Kodanki and 2. M.Mookkan (the petitioner's father) and one daughter viz., Mrs.Peruchi Ammal (daughter). It comes to be known that the petitioner's grandfather Maruthan Samban died on 10.05.1957. Later, his wife



Solaiammal also died. After their death, their legal heirs jointly enjoyed the entire properties including the landed property situate in Kadavoor Kallampatti, Chathirapatti and Madurai North Taluk, Madurai without any partition.

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5. The categorical plea taken on behalf of the petitioner is that the legal heirs of the aforesaid Maruthan Samban viz., Kodanki died on 08.07.1990 and the petitioner's father Mookkan expired on 07.09.1994 and his paternal aunt viz., Peruchi Ammal died on 12.01.2008, leaving the respective legal heirs. Furthermore, all the legal heirs of the aforesaid three persons, viz., Kodanki, Mookkan and Peruchi Ammal are in joint possession and enjoyment of the aforesaid properties of Maruthan Samban without any partition. Apart from that, the chitta for the said property stands in the name of Maruthan Samban. As a matter of fact, all the legal heirs of the aforesaid three, had decided to partition the ancestral property and in order to change patta in their names, the Revenue Authority is in need of Legal Heirship Certificate for their ancestor 'Maruthan Samban'.

6. The version of the petitioner before this Court is that he had approached the Tahsildar, Madurai East, Madurai, praying for issuance of Legal Heirship Certificate of Maruthan Samban, by means of his representation dated 18.05.2015 and in fact, the second respondent refused to issue Legal Heir Certificate on two grounds viz., i) The said Maruthan Samban died 59 years back and (ii) None of the direct legal heirs of the said Maruthan Samban are alive, as per memo dated 26.05.2016.

7. The Learned Counsel for the Petitioner urges before this Court that the petitioner's father Mookkan and his paternal aunt Mrs. Peruchi Ammal produced the Legal Heirship Certificate of Mookkan and Kodangi and all the legal heirs of the Maruthan Samban are residing only in Keelakallanthiri Village and died in the very same village. Indeed, the second respondent/Tahdildar, Madurai East had issued the Legal Heirship Certificate to the petitioner's father and his paternal aunt. The Learned Counsel for the Petitioner assailing the memo dated 26.05.2016 of the second respondent emphatically submits that the impugned order of the second respondent suffers from non-application of mind and in fact, 'the delay' is not a factor for refusing to issue the Legal Heir Certificate.

8. In this connection, the Learned Counsel for the Petitioner cites the order of this Court dated 24.11.2010 in **W.P. (MD).No.13434 of 2010, between S.Poovalingam Vs Tahdildar, Madurai North Taluk, Madurai** (vide Indian Kanoon-<http://indiankanoon.org/doc/1555489/>), whereby and whereunder, it is observed and held as follows:

"This writ petition has been filed



challenging the order passed by the respondent, on 07.10.2010, rejecting the request of the petitioner for the issuance of a legal heir certificate, on the ground that the request had been made after the period of 14 years, after the death of one Senbagathevar, the father of the petitioner.

2. The learned counsel appearing on behalf of the respondent has not been in a position to show the provision of law or the Government Order, which states that the legal heir certificate should not be issued beyond a certain period.

3. The learned counsel appearing on behalf of the petitioner had placed before this Court, an order passed, on 21.04.2007, in W.P.(MD).No.3772 of 2007, wherein, this Court had set aside a similar proceedings and had directed the respondent to consider, afresh, the petition submitted by the petitioner for the issuance of a legal heir certificate, within a specified period.

4. In such circumstances, the impugned order of the respondent, dated 07.10.2010, is set aside and the respondent is directed to consider, afresh, the petition submitted by the petitioner, for the issuance of a legal heir certificate and to pass appropriate orders thereon, within a period of four weeks from the date of receipt of a copy of this order."

9. Also, the Learned Counsel for the Petitioner refers to the order dated 17.09.2013 in **W.P. (MD).Nos.15259, 15256 and 15263 of 2013 between Velusamy and The District Collector, Virudhunagar District** and others, wherein at paragraph Nos. 2 and 3, it is observed as follows:

"2. In one another W.P.(MD).No.11709 of 2009, dated 16.11.2009 against the Tahsildar of Madurai South, this Court categorically made it clear in paragraph No.9, which is given as under:

"It is pertinent to note that there is no limitation for seeking the relief of Legal Heirship Certificate and as such the rejection of the application filed by the petitioners seeking for the relief of issue of Legal Heirship Certificate on the ground of delay in preferring the application is unsustainable in law. Accordingly, this Court is constrained to set aside the impugned order passed by the respondent in

Ms.No.21078/2009/E3 dated 27.10.2009 and accordingly, the same is set aside and



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the respondent is hereby directed to reconsider the application submitted by the petitioner dated 21.10.2009 seeking for the relief of issue of Legal Heirship Certificate in respect of the death of the mother of the petitioners 2 7 3 and wife of the first petitioner viz., Tmt.A.S.Susila by conducting an enquiry in the manner known to law and thereafter, to issue the Legal Heirship Certificate. It is made clear that the above exercise should be completed by the respondent within a period of eight weeks from the date of receipt of a copy of this order."

3.Although repeated orders have been passed directing the various Tashildars belonging to different Taluk holding that there is no limitation for seeking the relief of Legal Heir Certificate, repeatedly statements are made by the Law Officers on the instructions of the Tasildhar that there is a limitation for issuing Legal Heirship Certificates, therefore, this Court is of the view that, the District Revenue Officer of Madurai, Dindigul, Sivagangai and Virudhunagar should be present to assist their Law Officers on the issue of limitation/delay for making application for getting Legal Heirship Certificate, so that a common direction will be given and that will be constantly followed by all the Tashildar office in the State."

10. It is to be borne in mind that there is no time limit or limitation period fixed for obtaining the relief of Legal Heirship Certificate. On the ground of inaction or laches, the request for issuance of Legal Heir Certificate cannot be rejected by the concerned revenue authority. Viewed in that perspective, the reason ascribed by the 2nd respondent/Tahsildar, Madurai East, in the impugned order dated 26.05.2016 to the effect that '59 years have gone by after the death of Maruthan Samban' is perse not correct in the eye of Law. In regard to the other reason ascribed to the effect that 'none of the direct legal heirs of petitioner are presently alive' and based on that, the request for issuance of Legal Heirship Certificate was rejected by the second respondent through memo dated 26.05.2016, in this connection, this Court succinctly points out that the petitioner at paragraph No.5 of his affidavit had clearly averred as under:

" 5. I further submit that, the legal heirs of Maruthan Samban and Solaiammal namely Kodangi died on 08.05.1990 and my father Mookan died on 07.09.1994 and my paternal Aunt Peruchi ammal died on 12.01.2008, leaving their respective legal heirs.



All the legal heirs of the above three namely Kodangi, Mookan, Peruchiammal are in joint possession and enjoyment of the properties of the said Maruthan Samban without any partition. The Chitta for the said property stands in the name of Maruthan Samban. Now all the legal heirs of the above three, have decided to partition the ancestral property. In order to change the patta in our names, the revenue authority wants the legal heir certificate for our ancestor Maruthan Samban."

11. In view of the above, this Court, at this stage, without expressing any further opinion in the subject matter in issue, simpliciter, sets aside the impugned memo/order of the second respondent in the interest of Justice and allows the present writ petition, filed by the petitioner.

12. In fine, the writ petition is allowed leaving the parties to bear their own costs. Resultantly, the impugned order/memo dated 26.05.2016 of the second respondent is set aside by this Court, for the reasons assigned in this order. Further, the second respondent is directed to pass a fresh, speaking order on merits (of-course, after providing necessary opportunity to the petitioner and others concerned), especially keeping in view the averments made at paragraph Nos.5 to 7 of the writ affidavit of the petitioner, within a period of four weeks from the date of receipt of copy of this order. It is needless for this Court to relevantly point out that the petitioner is directed to co-operate with the second respondent in the subject matter in issue. In case, the second respondent is in need of copies of records from the custody of the petitioner or copies of relevant documents from the petitioner, then, the Officer is empowered to obtain the same from the petitioner by issuing necessary notice or relevant proceedings, as the case may be. It is made quite clear that the second respondent/Tahsildar, Madurai East, shall pass a fresh order, in the subject matter in issue viz., Legal Heirship Certificate within the time adumbrated by this Court.

13. Before parting with the case, this Court also points out that if the petitioner is desirous of letting in any oral or documentary evidence, as the case may be, he has to examine any witness, then, the second respondent/ Tahsildar, Madurai East, is also directed to permit the petitioner in this regard.

Sd/-

Assistant Registrar (W)

/True Copy/



VS

To

1.The District Collector, Madurai District,
Madurai.

2.The Tahsildar, Madurai East,
Madurai.

+1CC to Mr.Babu Rajendran, Advocate Sr.No.37364

+1CC to Spl.Government PleaderSr.No.37569

GJM/PEK/26.7.16-6p-5c

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