

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

Orders Reserved on 01.02.2018

Orders Delivered on 06.02.2018

C O R A M

THE HON'BLE Mr.JUSTICE K. RAVICHANDRABAABU

W.P.No.27592 of 2017

1.M.G.Mamtha
2.C.Soundarya

...Petitioners

vs

The Tahsildar,
Dhenkanikottai Taluk Office,
Dhenkanikottai,
Krishnagiri District.

...Respondent

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the respondent relating to Na.Ka.4276/2017/B2 dated 17.10.2017 and quash the same and consequently direct respondent herein to issue Legal Heirship Certificate of late Chandrasekar including the names of the petitioners as wife and daughter on the basis of the petitioner's application dated 03.07.2017, within the time to be stipulated by this Court.

For petitioners: Mr.R.Bharath Kumar

For Respondent : Mr.R.Govindasamy
Special Government Pleader

ORDER

The first petitioner is the mother and the second petitioner is the adopted daughter of the first petitioner and her deceased husband by name Chandrasekar. These petitioners are aggrieved against the order of the respondent in refusing to issue them the Legal Heirship Certificate in pursuant to the death of the said Chandrasekar only on the reason that the second petitioner is Class II heir of the deceased and therefore, the petitioners have to approach the Civil Court and get remedy.

2.The case of the petitioners, in short, is as follows:

The first petitioner was married to the said

S.Chandrasekar in the year 1987. As there was no issue out of their wedlock for long number of years, they have adopted the second petitioner, while she was 1 1/2 years old from the first petitioner's brother and his wife, on 24.11.1994, as per their family customs followed in that locality. A deed of adoption was entered into on 24.11.1994 and registered as Document No.18 of 1995 on the file of the Sub Registrar, Dhenkanikottai. The said Chandrasekar died intestate on 19.06.2017, leaving behind the petitioners as his legal heirs. All the records like School Transfer Certificate, Ration Card, Community Certificate carried the name of the second petitioner as daughter of late Chandrasekar and the first petitioner. An application was filed before the respondent on 03.07.2017, for issuing the Legal Heirship Certificate for the purpose of transferring patta and for operating bank accounts, etc., However, the said request was rejected by passing the impugned order, as stated supra.

3.The respondent filed a counter affidavit by stating as follows:

The first petitioner married to the said Chandrasekar and they adopted a girl child on 24.11.1994. The said Chandrasekar died intestate on 19.06.2017, leaving behind the petitioners as his legal heirs to succeed estate. The petitioners applied for Legal Heirship Certificate. The Revenue Inspector, on verification and enquiry, submitted a report on 06.10.2017 and recommended for issuance of Legal Heirship Certificate, certifying that the petitioners are the legal heirs of the said Chandrasekar. A legal opinion dated 11.10.2017 was also furnished by the learned Government Pleader, Dhenkanikottai. However, the petitioner's request was not considered, since the second respondent being an adopted daughter, cannot be considered as Class I heir as per the Hindu Succession Act.

4.Learned counsel for the petitioners, after inviting this Court's attention to Section 12 of the Hindu Adoption and Maintenance Act, 1956 and the decision of the Apex Court reported in 2003(4) SCC 71, (Namdev Vyankat Ghadge vs Chandrakant Ganpat Ghadge), contended that the reasoning of the respondent in refusing to issue the Legal Heirship Certificate cannot be sustained in the eye of law. Thus, he submitted that the second petitioner, the adopted daughter is to be treated as the child of the first petitioner and the deceased Chandrasekar for all purposes with effect from the date of adoption and therefore, the respondent is bound to issue the Legal Heirship Certificate by including the name of the second petitioner also as Class I heir of the deceased.

5.On the other hand, the learned Special Government Pleader reiterated the contentions raised in the counter affidavit as well as the reasons stated in the impugned order.

6. Heard both sides.

7. The adoption of the second petitioner by the first petitioner and her deceased husband is not under dispute. On the other hand, the respondent himself admitted in the counter affidavit about the factum of such adoption on 24.11.1994 followed by the verification and enquiry conducted in the locality, by the Revenue Inspector, who in turn also filed a report on 06.10.2017, to that effect as well. Therefore, now the question that arises for consideration is whether the second petitioner, as the adopted daughter, is entitled to be treated as Class I legal heir, to be included as one of the legal heir of the deceased while issuing the Legal Heirship Certificate or it is for the petitioners to agitate the matter before the Civil Court to get the right and status of the second petitioner so declared therein, as stated in the impugned order. In order to answer the above question, it is better to understand the relevant provisions of law.

8. Section 3(1)(f) of the Hindu Succession Act, 1956 defines the word "heir" as follows:

" "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;"

Thus, it shows that a person who inherits or by law inherit the estate of the deceased is called heir.

9. Section 12 of the Hindu Adoptions and Maintenance Act, 1956 deals with effects of adoption. It reads as follows:

"12. Effect of adoptions:- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

Provided that-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

10.The above said provision of law has come up for consideration before the Hon'ble Supreme Court in a case reported in 2003(4)SCC 71, (Namdev Vyankat Ghadge v. Chandrakant Ganpat Ghadge), wherein at paragraph Nos.17 and 18, it has been observed as follows:

"17.It is plain and clear that an adopted child shall be deemed to be the child of his or her adopted father or mother for all purposes with effect from the date of adoption as is evident from the main part of Section 12. Proviso (c) to Section 12 in clear terms states that the adopted child shall not divest any person of any estate, which vested in him or her before the adoption.

18.In the case of Dharma, ((1988) 2 SCC 126) aforementioned, the adopted son became a member of coparcenary with Dharma and there was no question of divesting of any property already vested in the view expressed by this Court in Vasant, ((1987) 1 SCC 160)."

11.In fact, the Apex Court relied on the earlier decisions made and reported in 1998(2)SCC 126, (Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe) and 1987(1)SCC 160, (Vasant v. Dattu), to hold that the adopted son therein became a member of the Coparcenary, entitled to claim share in the property.

12.Perusal of the above said provision of law as well as the decision of the Apex Court, as discussed supra would show without any ambiguity that an adopted child, from the date of the legal adoption, becomes the child of adoptive father or mother for all purposes since such child severed his or her ties in the family of his or her birth from the said day onwards. Consequently, all the ties of the child are replaced in the adoptive family created by adoption. Though such adopted child, in the adoptive family, is not the child by biological creation, however, it should be born in mind that such adopted child is the child of the adoptive family by legal creation, which status certainly confers on such child all such rights as a biological child in the adoptive family. Once such right is conferred under law, the said child is to be considered, treated, looked into, given the status as the child of the adoptive family, as the prefix "adopted" is bound to vanish or atleast loose its significance any more for any purpose from the day of adoption. Hence, the respondent is not empowered to deny the same and refuse to issue the Legal Heirship Certificate to the second petitioner, as she is to be treated as the child of the deceased Chandrasekar for all purposes and consequently, she becomes the Class I heir of the deceased and thus, entitled to get her name also included in the Legal Heirship Certificate.

13.At the same time, it is to be noted that a duty is cast upon the competent authority, before whom such an application is made, to get himself satisfied as to the genuineness of the supportive documents produced in support of such claim of adoption, like deed of adoption, etc., Only when such authority has any reasonable doubt in his mind with regard to genuineness of such adoption, that too, after conducting an enquiry in the locality, he can direct the parties to approach the Civil Court and get their rights established. Otherwise, the authority has to issue the Legal Heirship Certificate based on such documents. In this case, the respondent has not doubted the genuineness of the documents produced by the petitioners in support of their claim including the deed of adoption. Therefore, there cannot be any legal impediment for the respondent in issuing a Legal Heirship Certificate to the petitioners, as sought for by them.

14.Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent to issue the Legal Heirship Certificate of the deceased Chandrasekar to the petitioners. Such exercise shall be done by the respondent within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To
The Tahsildar,
Dhenkanikottai Taluk Office,
Dhenkanikottai,
Krishnagiri District.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.9171

+1cc to the Government Pleader, S.R.No.9393

W.P.No.27592 of 2017

GMR (CO)
RRK(12/02/2018)