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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD) No. 11921 of 2018

Alagammai ... Petitioner

vs.

The Tahsildar
Karaikudi
Sivagangai District ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent relating to O.Mu.A2/2361/2018 dated 08.04.2018 and to quash the same and consequently directing the respondent to issue Class-I Legal heir certificate of late S.Ramanathan by including the petitioner's son namely "RM.Arun Swaminathan" on the basis of the petitioner's application dated 05.04.2017.

For Petitioner : Mr.A.S.Abdul Kalam Azad

For Respondent : Mr.V.Anand
Government Advocate

O R D E R

This petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in relation with the impugned order dated 08.04.2018, quash the same and consequently direct the respondent to issue a Legal heir certificate for her husband by including the petitioner's adopted son, namely RM.Arun Swaminathan on the basis of the application dated 05.04.2017.

2. The following facts are not in dispute:

The petitioner was the wife of Ramanathan who died on 12.06.2010. The petitioner states that she belongs to Nagarathar community and she has two daughter and one son, who died at his tender age. It is stated that after the daughters got married, she adopted one Arun @ Arunachalam from Kandanoor and that there is a deed of adoption to support the factum of adoption. After the

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adoption, it is stated that the name of the adopted son was also changed from Arun @ Arunachalam to RM.Arun Swaminathan. It is further stated that the adopted son is a practising lawyer before this Court and his name was also changed through Government Gazette publication on 02.07.2015. Thereafter, inorder to mutation of the revenue records from the name of her husband to the name of the adopted son the petitioner applied for legal heir certificate. In this connection,by letter dated 04.04.2016 addressed to the respondent, the petitioner's daughter namely MN.Alamelu and RM.Muthammal gave their no objection for issuance of a legal heirship certificate to the petitioner.

3. However, the respondent rejected the application on the ground that the name sought to be included in the legal heir certificate is only an adopted son and therefore the parties can only approach the civil court and get the relief.

4. In this case the petitioner states that there is no dispute with regard to the factum of adoption. It is further stated that the persons, who are interested in the subject matter, have already given a letter for issuing a legal heir certificate by showing the adopted son as a legal heir of the deceased petitioner's husband.

5. In such circumstances, the decision of the respondent rejecting the application of the ground that the petitioner has to approach the civil court may not be proper.

6. The learned counsel for the petitioner relied upon the judgment of this Court in the Case of ***Sivaraman -vs- The Tahsildhar passed in W.P.(MD)No.7593 of 2018 dated 23.04.2018,*** wherein it has been held that the adopted son is deemed to be a Class- I Legal heir of the deceased. However, it would be appropriate to point out that such an adoption deed would subject to proof if questioned in any court of law.

7. Further the interested persons have not challenged the factum of adoption . The right of the adopted son to claim property left by the petitioner's husband is also not denied. Under such circumstance, this Court is of the view that the impugned order passed by the Tahsildar, Karaikudi is improper and contra to the law settled.

8. As a result, this writ petition is allowed and the impugned order passed by the Tahsildhar, Karaikudi dated 09.04.2018 is set aside and the matter is remanded back to the respondent for deciding the matter on merits within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(RTI)

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Sub Assistant Registrar

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To:

The Tahsildar,
Karaikudi,
Sivagangai District.

+ 1 cc TO Mr.A.S.Abdul Kalam Azad , Advocate in SR No. 69844

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