



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2018

CORAM:

WEB COPY THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)No.829 of 2014

Kanmani Anitha ... Appellant/Petitioner

Vs.

1.The Tahsildar,
Thovalai Taluk,
Thovalai - 629 302,
Kanyakumari District.

2.S.Sumathi ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 10.04.2014 made in W.P(MD)No.7717 of 2011, on the file of this Court.

Prayer in WP(MD). 7717/ 2011 :

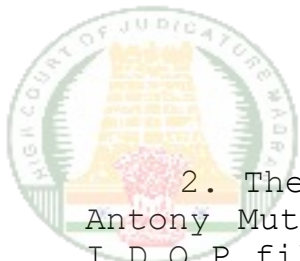
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Letter Memo in Rc.No.A4 : 3224/2010 dated 22.03.2011 on the file of the first respondent herein and to quash the same and direct the first respondent to issue proper and necessary Legal Heir certificate to the petitioner as the legal heir to her husband Antony Muthu, Son of Royappan, within a time frame as may be fixed by this Honourable Court.

For Appellant	: Mr.S.Subbiah Senior Counsel for Mr.G.Aravinthan
For R - 1	: Mrs.J.Padmaavathi Devi, Special Government Pleader.
For R - 2	: Mr.V.Meenakshi Sundaram for Mr.D.Nallathambi

JUDGMENT

(Judgment of the Court was delivered by

<https://hcservices.ecourts.gov.in/hcservices/> PUSHPA SATHYANARAYANA,J.)
Challenging the order, dated 10.04.2014 passed in W.P(MD)
No.7717 of 2011, the present Writ Appeal has been preferred.



2. The appellant/writ petitioner claims to be the wife of one Antony Muthu. As the same was not well with them, there was an I.D.O.P filed by the said Antony Muthu in I.D.O.P.No.114 of 2001, however, the same was allowed to be dismissed for default on 06.09.2001. Thereafter, the said Antony Muthu and the appellant/writ petitioner-Kanmani Anitha had entered into a deed, named and styled as 'Marriage Revocation Deed', dated 02.01.2006, intending to dissolve their marriage. No doubt, the said deed is not valid in the eye of law. However, admittedly, the appellant/writ petitioner was living away from her husband.

3. It is relevant to note that after the appellant/writ petitioner had left her husband-Antony Muthu, he had married one Sumathi, who is the second respondent herein and begotten two children. While so, the said Antony Muthu had died on 24.09.2008.

4. After the death of Antony Muthu, the appellant/writ petitioner applied for Succession Certificate, which was rejected by the first respondent stating that the marriage was already dissolved. Challenging the said finding, W.P(MD)No.2271 of 2010 was filed by the appellant/writ petitioner and the said order was set aside by this Court on 20.12.2010 and the matter was remitted back to the first respondent-Tahsildar for fresh consideration after issuing notice to the appellant/writ petitioner and the second respondent, who was the second wife.

5. After the remand, the matter was considered by the first respondent and an order was passed on 22.03.2011 holding that the appellant/writ petitioner-Kanmani Muthu and the children born to the second respondent are the legal heirs.

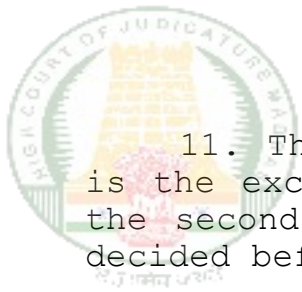
6. Aggrieved by the said order, W.P(MD)No.7717 of 2011 was filed by the appellant/writ petitioner contending that the second wife children cannot be the legal heirs of the deceased Antony Muthu.

7. The learned Single Judge, vide order dated 10.04.2014 dismissed the Writ Petition.

8. Aggrieved over the same, the appellant/writ petitioner has preferred the present Writ Appeal.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. It is contended that the parties are Christians and it is only in the Hindu Law, the children born to the second wife will be treated as legitimate children of the deceased, whereas, the parties being Christians, the same cannot be extended.



11. The question as to whether the appellant/writ petitioner is the exclusive or the only legal heir or the children born to the second wife are also legal heirs of the deceased, should be decided before issuing legal heirship certificate.

12. As there is question of law and facts, which need be proved based on evidence, it is open to the parties to approach the civil Court in this regard and establish their rights. There is no finding given in the order of the first respondent about the legality of the second respondent's marriage, which is a matter for evidence.

13. Therefore, we are of the considered opinion that the order passed by the learned Single Judge in W.P(MD)No.7717 of 2011 as well as the order passed by the first respondent are set aside and the parties are directed to go before the civil Court and get their remedies and establish their rights by letting evidence.

14. Accordingly, the Writ Appeal is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS-IV)

To

The Tahsildar,
Thovalai Taluk,
Thovalai - 629 302,
Kanyakumari District.

+1 CC To MR.D.NALLATHAMBI, Advocate SR. NO.89542
+1 CC To MR.P.JESSI JEEVA PRIYA, Advocate SR. NO.88913
+1 CC To MR.S.RAMASAMY, Advocate SR. NO. 88413

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