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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.16826 of 2018

K.Kumaraveloo

... Petitioner

vs.

1.The Tahsildar
Kamuthi Taluk
Kamuthi
Ramanathapuram District

2.The Deputy Tahsildar
Kamuthi Taluk
Kamuthi
Ramanathapuram District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the impugned order of second respondent dated 07.06.2018 in Oo.Mu.A6/4124/2018 and quash the same and consequently direct the respondents to issue the legal heir certificate of the deceased Karupppiah Servai, who the father of the petitioner based on the petitioner's application dated 18.05.2018.

For Petitioner : Mr.I.Suthakaran

For Respondents : Mr.M.Jeyakumar

Additional Government Pleader

O R D E R

The petitioner's father, namely, Karupppiah Servai, was a Farmer and he originally married one Mangalam Ammal and from the wedlock, they had six children. Subsequently, he married the petitioner's mother, namely, Sundarammal and through her, he has four children, including the petitioner. The petitioner herein is an employee of TANGEDCO and settled in his native town after his retirement. According to the petitioner, the family owned agricultural lands in the native place and the same is in possession of the petitioner's family.

2. While the matter stood thus, the petitioner and other legal heirs have decided to deal with the ancestral properties, for which they required a proper legal heirship certificate. In the said circumstances, the petitioner filed an application, on 18.05.2018, to the first respondent requesting him to issue a legal heirship certificate to the petitioner and other siblings on the death of his father, namely, Karupppiah Servai on 03.09.1970.



3. According to the petitioner, both the wives of the deceased Karuppiiah Servai had died and some of their children had also expired. While making the application to the first respondent, the petitioner had included the other siblings also irrespective of the fact that whether they have been born to the deceased Karuppiiah Servai through his first wife or second wife.

4. The petitioner, in this regard, had submitted all the necessary documents, namely, Death Certificate of his father and Family Cards, Aadhar Cards of the surviving legal heirs. But, the second respondent, without conducting any enquiry or providing any opportunity to the petitioner, rejected his claim, by an order dated 07.06.2018, stating that the petitioner's father had more than one wife and therefore, the petitioner has to approach the competent Civil Court to get the relief. The said proceedings of the second respondent, dated 07.06.2018, is put to challenge in this writ petition.

5. The learned counsel appearing for the petitioner would vehemently submit that a duty is cast upon the second respondent to conduct a detailed enquiry whenever an application is made for issue of legal heirship certificate. In this case, without any application of mind, the second respondent has summarily rejected the petitioner's claim only on the ground that his father had two wives without appreciating the fact that both the wives were no more and many of their children died. According to the learned counsel for the petitioner, there was no rival claim or dispute in regard to the succession. Despite the same, the respondents have mechanically rejected the petitioner's application for issue of legal heirship certificate.

6. Upon notice, Mr.M.Jeyakumar, learned Additional Government Pleader, entered appearance and he would produce a Circular, dated 09.08.2017, issued by the Department. Clause No.7 of the said Circular is extracted hereunder:

"7) General instructions:

Tahsildars shall not issue legal heir certificates for the following cases and to inform the applicants to approach the Competent Court for obtaining the legal heir certificates.

(i) If more than one wife / husband exist for the deceased.

(ii) ...

(iii) ..."

Therefore, by relying on the said Circular, the respondents have rejected the petitioner's claim.

7. At this juncture, the learned counsel for the petitioner would submit that the said Circular can be applied only when there are rival claimants and the wives of the deceased husband are alive. In this case, both the wives died long ago and there was also no



dispute in regard to the claim of succession. Therefore, it is imperative on the part of the respondents to conduct an enquiry before taking any decision. The respondents cannot shirk their statutory responsibilities and summarily reject, with wooden approach, what is mentioned in the application.

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8. This Court has considered the rival submissions and is in full agreement with the submissions made by the learned counsel for the petitioner.

9. From the facts disclosed and the submissions made on behalf of the petitioner, it appears that there is no dispute with regard to the claim of the legal heirship to the deceased Karupiah Servai, who died on 03.09.1970. In any event, it is imperative on the part of the respondents to conduct enquiry in regard to the veracity of the claim of the petitioner and other siblings. However, in this case, the respondents have chosen to reject the claim of the petitioner only on the stated ground which cannot not be countenanced by this Court either under law or on facts.

10. Be that as it may, as rightly contended by the learned counsel for the petitioner, the respondents are under statutory obligation to conduct an enquiry, whenever such an application is made and they cannot reject such application summarily. Therefore, this Court is of the view that the impugned order of the second respondent, dated 07.06.2018, in Oo.Mu.A6/4124/2018, is unsustainable and therefore, the same is set aside.

11. The matter is remitted back to the respondents / Competent Authority to conduct a detailed enquiry into the application submitted by the petitioner for issuance of legal heirship certificate and in case there is no dispute in regard to the claim of succession, it is open to the competent Authority to pass appropriate orders on such basis, within a period of four weeks from the date of receipt of a copy of this order.

12. With the above directions, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CO)

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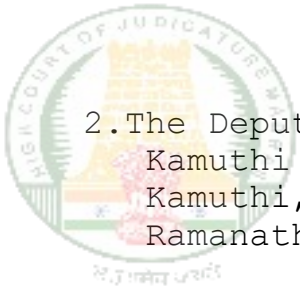
Sub Assistant Registrar (CS IV)

krk

To:

1.The Tahsildar,
Kamuthi Taluk,

<https://hcservices.ecourts.gov.in/hcservices/>
Kamuthi, Ramanathapuram District.



2.The Deputy Tahsildar,
Kamuthi Taluk,
Kamuthi,
Ramanathapuram District.

1CC TO MR. I. SUTHAKARAN, ADVOCATE SR 80513
1CC TO THE SPL GOVERNMENT PLEADER SR 80763

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