



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P. (MD) No. 6784 of 2017

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Minor Soorya Prakash
S/o. (late) Paneer Selvam
H.2/26 Poonga Nagar
Pudukottai Taluk and District
represented through his Grandmother and
next friend
Saraswathi @ Sarasu

... Petitioner

vs.

The Tahsildhar
Pudukottai Taluk Office
Pudukottai District

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondent to include the name of the petitioner's grandson Minor Soorya Prakash in the legal heir certificate issued in his proceedings No.Pa.Mu.1130/2016(a-5) dated 01.04.2016.

For Petitioner : Mr.N.Balakrishnan

For Respondent : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

O R D E R

The grievance of the petitioner is that his request for inclusion of his name in the legal heirship certificate of late Paneerselvam has not been considered and that the mother of the late Paneerselvam has been shown as legal heir. The petitioner herein claims to be the adopted son of late Paneerselvam through an adoption deed dated 05.01.2013 and the said Paneerselvam died on 14.10.2015. Subsequently when legal heirship certificate was issued for late Paneerselvam, the mother of Paneerselvam alone shown as a legal heir and the petitioner's name was omitted. Though the adoption deed is unregistered, the Registration Act does not mandate such registration and as such the respondent may not be justified in seeking for registration of the adoption deed. This aspect has been settled in a judgment of the Honourable Apex Court in **Parampal Singh through Father -vs- National Insurance Company and another reported in 2013(3) 3 Supreme Court Cases 409**. The relevant portion of the said extract is as follows:



Adoption Deed. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents mentioned in sub-section 1 of Section 17 which mandatorily required registration. Sub-section 3 of Section 17 only refers to the mandatory requirement of registration of an authorization that may be given for adopting a son executed after 01.01.1872 if such authorization was not conferred by a Will. Dealing with the said provision relating to authorization, it has been held in the decision reported in Vishvanath Ramji Karale V. Rahibai Ramji Karale and others - AIR 1931 Bombay 105 by a deed of adoption as distinguished from authority to adopt does not require registration.

15. Keeping the above statement of law in mind as regards the procedure to be followed for a valid adoption and the statutory stipulation that an adoption deed does not require registration, the claim of the appellant as the adopted son of the deceased requires to be considered. We find from the record that the appellant has produced Exhibit AW1/R which is the copy of the Adoption Deed. To appreciate the claim of the appellant in the proper perspective the contents of the said document can be usefully referred to which reads as under:

"TRUE TRANSLATION IN ENGLISH Stamp ADOPTION DEED

1. Ajit Singh son of Surta Singh son of Deva Singh, am residing at village Dhariwal Kalan, Tehsil & Distt-Gurdaspur, Punjab (hereinafter called the first party). That I am unmarried so I have no children. Keeping in mind that in absence of the children one becomes without any care. Hence, for the purpose of proper maintenance a son is necessary. So, I have thought it fit to take Master Parampal son of Sh. Santokh Singh and Smt. Nirmal Kaur (hereinafter called the second party) resident of village Dhariwal Kalan in adoption and they have decided to give. Master Parampal's date of birth is 8-12-1996. His bringing up is being done by me and I am planning to send him to school. For the interest of his health and medication I myself do care. Parampal Singh is a very obedient boy and he always remains obedient to me and show me utter respect. I always have a



great affection for him. I want that whatever I leave behind be owned by Parampal Singh. I, in the presence of all respected persons and Panchayat, adopt Master Parampal Singh as my son and in the ceremony goods and sweets are distributed for the happiness of one and all.

Adoption Deed is reduced in writing for the purpose of proof.

First party

Second party

Ajit Singh LTI
Sd/- Gurbax Singh
Sarpanch 15/2/1999
Gram Panchayat Seal & Stamp
Dhariwal Kalan

Witnesses:-

Sd/-
Nishan Singh
S/o-Dayal Singh
Vill-Chhina Retwala
15/2/1999

Sd/-
Nirmal Kaur
Sd/-

Witnesses:-

Sd/-
Tarsem Singh
S/o-Bawa Singh
R/o-Dhariwalkalan
Sd/-
Karnail Singh
Nambardar
Vill-Kallu Sohal"

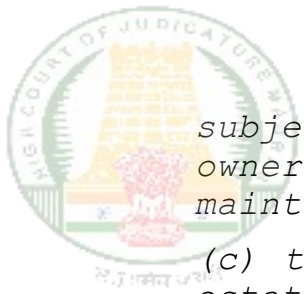
2. Likewise the adopted child is also deemed to be the child of the adopted father as per Section 12 of the Hindu Adoption Maintenance Act. This proposition came up for consideration before the this Court in **M.G.Mamtha and other -vs- Tahsildhar, Dhenkanikottai Taluk Office reported in 2018 (1) CTC 814** and a learned judge of this Court had rendered his findings as follows:

"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 at least lose 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".

3. In the light of the above said propositions the respondent may not be justified in keeping the legal heir certificate and the petitioner's representation pending without incorporating petitioner's name in the legal heirship certificate of late Paneer Selvam.

4. In the light of the above observation, there shall be a direction to the respondent to consider the petitioners representation in the light of the above and pass necessary order within a period of two weeks from the date of receipt of a copy of this order.

5. With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Tahsildhar
<https://heservices.ecourts.gov.in/heservices/>
Pudukottai Taluk Office
Pudukottai District.



+1cc to Spl.Government Pleader Sr.No.76603

+1cc to Mr.N.Balakrishnan, Advocate Sr.No.76460

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