

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.4322 of 2019

1.B.Datchayani
2.S.Sabitha2

...Petitioners

vs.

1.The Secretary to Government
Department of Revenue
Fort St.George,
Chennai-600 003.

2.The Tashildar
Thiruvottiyur Taluk
Chennai District.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 31.12.2018 in Na.Ka.No.1771/2018/A3 on the file of the 2nd respondent herein and quash the same and consequently, direct the 2nd respondent herein to include the name of the 2nd petitioner herein and issue fresh legal heirship Certificate of late V.Balasundaram within a time frame stipulated by this Honourable Court.

For Petitioners : J.Ravikumar

For Respondents : Mr.S.Soundararajan
Government Advocate

O R D E R

Mr.S.Soundararajan, learned Government Advocate takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioners are aggrieved against the order of the second respondent dated 31.12.2018, wherein and whereby, they requested for issuing Legal Heirship Certificate for the deceased husband of the first petitioner viz., V.Balasundaram,

by including the second petitioner's name as a adopted daughter, has been rejected on the reason that the second respondent is not having any power to issue such certificate and consequently, the petitioners have to approach the Civil Court.

3. Heard the learned counsel for the petitioners and the learned Government Advocate for the respondents.

4. The very same issue involved in this case was already considered by this Court in WP.No.27592 of 2017 dated 06.02.2018, wherein, at Paragraph Nos.12,13 &14, it has been observed as follows:

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.

5. In view of the above order passed in similar matter, this Court is of the view that the second respondent has to conduct enquiry and get himself satisfied based on the documents to be produced by the petitioners in support of such claim of adoption and on completion of such enquiry, if the second respondent has no doubt about the genuineness of the adoption, there cannot be any legal impediment for him in issuing the Legal Heirship Certificate, as claimed by the petitioners. Only when the second respondent has any reasonable doubt in his mind with regard to the genuineness of such adoption, that too, after conducting an enquiry, he can direct the parties to approach the Civil Court.

6. Perusal of the impugned order does not show as though the second respondent has conducted any enquiry and gone through the documents in support of the claim of the petitioners. Therefore, I find that the matter needs to go back to the second respondent to reconsider the issue once again in the light of the order passed by this Court in WP.No.27592 of 2017, as extracted supra. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is

remitted back to the second respondent to pass fresh orders on merits and in accordance with law, after conducting due enquiry and perusing the documents to be filed by the petitioners, also by taking note of the order already passed in WP.No.27592 of 2017 dated 06.02.2018. Such exercise shall be done by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

1.The Secretary to Government
Department of Revenue
Fort St.George,
Chennai-600 003.

2.The Tashildar
Thiruvottiyur Taluk
Chennai District.

+1 cc to Mr.J.Ravikumar, Advocate, S.R.No.14274

+1 cc to the Government Pleader, S.R.No.14136

SSV(CO)
SSM(07/03/2019)

W.P.No.4322 of 2019

सत्यमेव जयते
WEB COPY