

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.12522 of 2017

S.Rajendran

...Petitioner

-Vs-

1.The Commissioner of Police,
Vepery,
Chennai-600 007.

2.The Inspector of Police,
Anti Land Grabbing Special Cell-II,
Central Crime Branch,
Vepery,
Chennai-600 007.

3.S.Ambigeshwaran

4.A.Sumathy

... Respondents

Respondent 3 & 4 are impleaded as per 115 order of this Honourable Court dated 02/08/2017 made in Crl.Mp.No. 9393/17 in Crl.OP.No. 12522/2017.

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the report of the 2nd respondent dated 27.12.2014, consequently issue direction to the 1st respondent to nominate a competent officer in the rank of Assistant Commissioner of Police to register a case on the petitioner's complaint dated 04.12.2003 and investigate the same in accordance with law.

For Petitioner : Mr.P.Krishnan

For R 1 & R 2 : Mr.C.Raghavan

Government Advocate.

ORDER

This Criminal Original Petition has been filed challenging the closure of the Complaint given by the petitioner to the respondent Police.

2.The case of the petitioner in brief is that the

petitioner as the son of R.Sivaprakasam is entitled to 50% share in the property and that the accused persons had illegally obtained a fabricated legal heirship Certificate by not showing the name of the petitioner and they have dealt with the property and sold the property to one Ramanibai.

3.The respondent Police after receiving the complaint did not register any FIR. A preliminary enquiry was conducted by the respondent Police and the respondent Police have closed the complaint on the ground that the dispute is civil in nature and that the petitioner will have to workout his remedy before the competent Civil Court.

4.The learned counsel for the petitioner submitted that there are overwhelming documents to show that the petitioner is the adopted son of late R.Sivaprakasam. The learned counsel submitted that the respondent Police ought to have registered an FIR and should have conducted a detailed investigation and without doing the same, the respondent Police went wrong in closing the complaint as civil in nature. Therefore, according to the learned counsel for the petitioner, the closing of the complaint by the respondent Police is unsustainable.

5.The learned Government Advocate appearing on behalf of the respondent Police submitted that on the enquiry conducted by the respondent Police, it was found that the dispute is purely civil in nature. The learned counsel submitted that if at all the petitioner has any right over the property, he can only agitate the rights before the competent Civil Court and claim for his share. The learned counsel concluded his arguments by submitting that there are no grounds to interfere with the closing of the complaint by the respondent Police.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The crux of the complaint made by the petitioner is that the petitioner is entitled for 50% of share in the property of his adoptive father and intentionally his name was left out in the legal heirship Certificate and the accused person who has not even a legal heir of late R.Sivaprakasam, has obtained legal heirship Certificate from the Revenue Authorities and has dealt with the property and sold it to one Ramanibai.

8.The apprehension of the petitioner is that the closing of the complaint will be put against the petitioner and the petitioner will not even be able to get a legal heirship Certificate in view of the finding given by the respondent

Police. It is his further apprehension that the petitioner while claiming his right before the Civil Court, will find it very difficult to establish his right in view of this closure report.

9. The status of a legal heirship Certificate has been dealt by this Court in *Chrome Leather Company Ltd., rep. by its Manager . Vs. Collector, Kancheepuram District & Others* reported in [2008 4 MLJ 361]. The relevant portions of the judgment is extracted hereunder.

"15. It is not in much dispute that as on date, what are to be followed by the Tahsildars for issuance of legal heir certificate are the guidelines as per the letter of the Special Commissioner and Commissioner and Secretary to Government, Revenue Department in letter No.1534 dated 28.11.1991. A reference to the said letter along with the annexure which provides for various guidelines makes the following points clear:

(i) In respect of direct legal heirs, the legal heir certificate should be issued by the Tahsildar by following the existing practice;

(ii) In respect of the persons who are not direct legal heirs;

(a) In cases where the deceased person was having more than one wife or husband, having children and among them there is partition dispute which is revealed during enquiry;

(b) In cases where a person was not seen for 7 years and therefore, he should be presumed to have died, which results in the issuance of legal heir certificate; (c) In cases where the person who has applied for legal heir certificate is not living within the jurisdiction of the Tahsildar or not having any properties and failed to appear before the Tahsildar for enquiry; and

(d) In cases where the deceased person was not having any children, but he was adopting a child;

in all the above said cases, the Tahsildar shall avoid issuing legal heir certificate and direct the concerned petitioner to approach the Civil Court;

(iii) In respect of direct legal heirs, who

apply for issuance of legal heir certificate along with death certificate on payment of necessary charges, the Tahsildar, shall refer the same to the Revenue Officer for enquiry. The Revenue Officer and the Village Administrative Officer, on receipt of such request from the Tahsildar, must visit the place of the petitioners, where they are living and conduct enquiry by getting statement from the petitioners and their family members and public and refer to various documents relating to the properties, including the Family Card, Will, etc., and ascertain the legal heirs of the deceased person and send a report to the Tahsildar. After receipt of such report, the Tahsildar shall consider the same, and after confirming the correctness of the said report and in cases where he gets doubt, he can call the petitioners and their family members and also the public and decide the issue. After the Tahsildar comes to a conclusion without any suspicion, he can issue the certificate in the prescribed format.

Therefore, it is clear that in cases where the person has made application for legal heir certificate, who is not a direct legal heir, he has to be directed by the Tahsildar, to approach the Civil Court. In the present case, it is not in dispute that the third respondent has applied to the second respondent for issuance of legal heir certificate for the properties of George Alexander Chambers".

10. It is clear from the above that the legal heirship certificate issued by the Revenue Authorities does not take away the right accrued to a person under law.

11. The apprehension raised by the petitioner is unfounded. The petitioner who claims to have overwhelming documents to prove that he is the son of late R. Sivaprakasam, can always establish the same before the Competent Civil Court. The so-called legal heirship Certificate obtained by the accused person can never be put against the petitioner, since a legal heirship Certificate cannot take the place of the evidence placed before the Court and it is always a Competent Civil Court which can determine the status of a person. A civil Court is not bound by legal heirship Certificate given by the Revenue Authorities.

12. In view of the above, this Court is not inclined to interfere with the closure of the complaint done by the 2nd respondent Police. It will always be left open to the petitioner to agitate his rights independently before a competent Civil Court and claim his share in the property. This Criminal Proceedings will have absolutely no bearing on the right of the petitioner and the proceedings initiated by the petitioner before the Civil Court.

13. It was brought to the notice of this Court that the petitioner has already moved an application for cancellation of Patta before the Tahsildar. The same was kept pending in view of the pendency of this criminal original petition. In view of the orders passed by this Court in this petition, it is well open to the petitioner to proceed further with the application given before the Tahsildar. Such a liberty was also given to the petitioner by this Court, while disposing of W.P.No.16669 of 2018, by an order dated 05.07.2018.

Accordingly, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Commissioner of Police,
Vepery,
Chennai-600 007.

2. The Inspector of Police,
Anti Land Grabbing Special Cell-II,
Central Crime Branch,
Vepery, Chennai-600 007.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Krishnan, Advocate, S.R.No. 60090

CrI.O.P.No.12522 of 2017

CP(CO)
GN(26/08/2019)