



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) No.6449 of 2019

and

W.M.P. (MD) No.5155 of 2019

Kaleeswari

... Petitioner

Vs

The Tahsildar,
Thirumangalam Taluk Office,
Thirumangalam,
Madurai District.

... Respondent

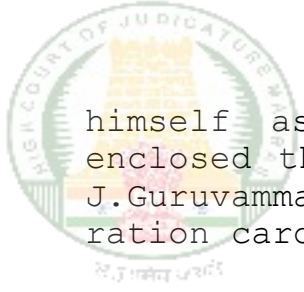
PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding dated 07.12.2018 passed in Application No.TN 720181207938 by the respondent and quash the same and consequently direct the respondent herein to issue Legal Heirship Certificate of Late. Jeyaram including the name of the petitioner as daughter on the basis of the petitioner's application dated 07.12.2018 within the stipulated time.

For Petitioner : Mr.S.Pandiyaraj
For Respondent : Mr.M.Karuppasamy
Government Advocate

ORDER

The petitioner claims that within a month from the date of her birth, she was given in adoption to one Jeyaram and his wife Guruvammal by her biological parents, namely Gopalakrishnan and Panjavarnam. Guruvammal passed away in the year 2006. Jeyaram passed away on 28.11.2018. The petitioner applied to the respondent for issuing legal heir certificate. Since, the petitioner was not in a position to file an adoption deed, the respondent declined to issue the certificate as sought for. The rejection order dated 07.12.2018 is under challenge in this writ petition.

2.Eventhough, the petitioner is not in a position to produce any adoption deed, the materials enclosed in the typed set of papers clearly indicate that the petitioner was, in fact, the adopted child of the deceased Jeyaram. The community certificate of the petitioner is enclosed at page No.1 of the typed set of papers. This is of the year 1998. In the said community certificate, the petitioner's father is mentioned as A.Jeyaram. Obviously, the writ petitioner was a minor in November, 1998. Therefore it is only Jeyaram who must have applied for issuance of the community certificate. That itself indicates that the Jeyaram considered



himself as the petitioner's father. The petitioner has also enclosed the family card of the year 2005. The names of Jeyaram, J.Guruvammal and the writ petitioner are mentioned in the family ration card.

3. Taking note of all these aspects, this Court has to come to the conclusion that the writ petitioner was in fact the adoptive child of the deceased Jeyaram.

4. The learned counsel appearing for the writ petitioner drew my attention to the decision reported in **2018(3) CTC 680** in the case of **Kamla Rani Vs Ram Lalit Rai and other**, in which it was held as follows:

"6. We cannot lose sight of the principle that though the factum of adoption and its validity has to be duly proved and formal ceremony of giving and taking is an essential ingredient for a valid adopted, long duration of time during which a person is treated as adopted cannot be ignored and by itself may in the circumstances carry a presumption in favour adoption. In this regard, we may refer to the observations of this Court in **L. Debi Prasad (Dead) by LRs. v. Smt. Tribeni Devi and ors.**, AIR 1970 SC 1286 : 1970 (1) SCC 677 : LNIND 1970 SC 154.

"9. There is no doubt that the burden of proving satisfactorily that he was given by his natural father and received by Gopal Das as his Adoptive Son is on Shyam Behari Lal. But as observed by the judicial Committee of the Privy Council in *Rajendrao Nath Holdar V. Jogendro Nath Banerjee*, 14 Moor's Indian Appeals p.67; that although the person, who pleads that he had been adopted, is bound to prove his title as Adopted Son, as a fact yet from the long period during which he had been received as an Adopted son, every allowance for the absence of evidence to prove such fact was to be favourably entertained, and that the case was analogous to that in which the legitimacy of a person in possession had been acquiesced in for a considerable time, and afterwards impeached by a party, who had a right to question the legitimacy, where the Defendant, in Order to defend his status, is allowed to invoke against the Claimant every presumption which arises from long recognition of his legitimacy by members of his family; that in the case of a Hindu, long recognition as an Adopted Son, raised even a stronger presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family. In *Rup Narain v. Gopal Devi*, 36 IA 103, the Judicial Committee observed that in the absence of direct evidence much value has to be attached to the fact that the alleged adopted son had without controversy succeeded to his adoptive father's death were framed upon the basis



of the adoption. A Division Bench of the Orissa High Court in *Balinkin Padhano v. Gopalakrishna Padhano*, AIR 1964 Ori 117; held that in the case of an ancient adoption evidence showing that the boy was treated for a long time as the adopted son at a time when there was no controversy is sufficient to prove the adoption although evidence of actual giving and taking is not forthcoming. We are in agreement with the views expressed in the decisions referred to above." "

Respectfully following the said decision, I hold that the petitioner is the adoptive child of late. Jeyaram.

5.A learned Judge of this Court in the decision reported in **2018 (1) CTC 814** in the case of **M.G.Mamtha and another Vs. Tahsildar, Dhenkanikottai Taluk Office** held that there cannot be any distinction between an adoptive child and a biological child.

6.Following the aforesaid decisions, the order impugned in this writ petition is set aside and the respondent is directed to issue legal heir certificate indicating the writ petitioner as the daughter of the Late.Jeyaram, on the basis of her application dated 07.12.2018. Such a certificate shall be issued within a period of six weeks from the date of receipt of a copy of this order.

7.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Tahsildar,
Thirumangalam Taluk Office,
Thirumangalam,
Madurai District.
+1cc to Mr.S.PANDIYARAJ, Advocate, SR.No.57450
+1cc to M/s.Special Government Pleader,SR.No.57741

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