



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 08.08.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**

AND

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

W.A(MD)No.535 of 2019

and

C.M.P (MD)No.4516 of 2019

V.Selvakumar

.. Appellant/2nd Respondent

Vs.

1.P.Kaliammal

...1st Respondent/Writ Petitioner

2.The Tashildar,
Theni Taluk,
Theni District.

... 2nd Respondents/1st Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order W.P(MD)No.22118 of 2018 dated 26.03.2019.

Prayer in WP(MD). No.22118 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorarified Mandamus calling for the records pertaining to the impugned legal heir certificate issued by the 1st respondent made in Certificate No.TN-720180922301 dated 25.09.2018 and quash the same and consequently direct the 1st respondent to issue legal heir certificate for the petitioner deceased daughter namely Angayarkanni by including the petitioner with the time.

For Appellant : Mr.P.Muthu Vijaya Pandian
For Respondents : Mr.Sadiq Raja for
Mr.Pala Ramasamy (for R1)
Mr.N.Shanmugaselvam (for R2)

JUDGMENT

(Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**)

This writ appeal is filed challenging the order of the Writ Court made in W.P(MD)No.22118 of 2018, dated 26.03.2019.



2.The appellant is the second respondent before the Writ Court. The writ petition was filed challenging the legal heirship certificate issued by the Tahsildar, Theni Taluk, dated 25.09.2018, for the writ petitioner's deceased daughter, namely, Angayarkanni. The writ petitioner consequently sought for a direction to the said authority to include her name also as a legal heir of her deceased daughter. The Writ Court allowed the writ petition and directed the first respondent Tahsildar to issue a fresh legal heir certificate by showing the appellant herein as well as the writ petitioner as the legal heirs of the deceased Angayarkanni. The Writ Court gave such direction going by the clause I legal heirs referred to in the Schedule under Hindu Succession Act, 1956. This writ appeal is filed mainly by contending that the relevant provision applicable, under the facts and circumstances of the case, is only Section 15 of the Hindu Succession Act, 1956 and therefore, the Writ Court is not justified in relying upon clause I legal heirs shown in the schedule, which is referable to Section 8 of the Hindu Succession Act, 1956, which deals with a male dying intestate.

3.We heard both sides and perused the materials placed before this Court.

4.It is seen that the writ petitioner's daughter, by name, Angayarkanni died on 11.09.2018. She was married to the appellant herein. It is not in dispute that they had no children. After the death of the said Angayarkanni, the appellant herein as her husband obtained a legal heir certificate from the Tahsildar showing him alone as the legal heir. The writ petitioner being the mother of the deceased, thus questioned the said certificate by contending that she is also entitled to be shown as the legal heirs of the deceased daughter along with the appellant. Under the Hindu Succession Act, 1956, Section 15 deals with general rules of succession in the case of female Hindus, which reads as follows:-

15. General rules of succession in the case of female Hindus.-

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son



or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

5. Perusal of the above said provision of law would show that the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16, firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband, secondly, upon the heirs of the husband; and thirdly, upon the mother and father etc. Therefore, it is evident that the mother of the deceased female is placed only in the third position, whereas the sons and daughters and husband of the deceased are placed in the first position. Thus, the order of succession referred to under Section 15 would clearly indicate that one excludes the other as could be seen under Section 16 of the said Act. Section 8 of the Hindu Succession Act, 1956 deals with general rules of succession in the case of males, which reads as follows:-

"8. General rules of succession in the case of males.-The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased."

6. Perusal of the provision of law would show that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II firstly, upon the heirs, being the relatives specified in class I of the Schedule etc. Therefore, the class I referred to under Section 8 is referable only to the general rules of succession in the case of males and not in respect of female to whom Section 15 alone is applicable. Perusal of the schedule to the Hindu Succession Act, 1956 would also show that it is referable to Section 8 where class I heirs are shown including



the mother of the deceased. The Writ Court going by the persons shown in the class I of the schedule, which is undoubtedly referable to Section 8 alone that too only in respect of male dying intestate has erroneously come to the conclusion that the mother is also to be considered as the legal heir of the deceased daughter. In our considered view, the above conclusion made by the Writ Court is not legally sustainable in view of the above stated statutory position. No doubt, Section 15 sub-clause 2(a) contemplates that notwithstanding anything contained in sub-section (1) of Section 15 any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased, not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father. Needless to say that to take advantage of the benefit conferred under sub-clause 2 of Section 15, one has to first prove that the property inherited by such female Hindu died intestate was from her father or mother and therefore, the rule of succession as contemplated under sub-section 1 will not apply and on the other hand, it should be upon the heirs of the father. Here the issue is not with regard to the inheritance of any property of the deceased daughter and on the other hand, a simple legal heirship certificate sought for by the husband of the deceased. Undoubtedly, the husband being the person shown in the first place under clause 1 of Section 15, he has been rightly shown as the only legal heir in the absence of any children. As we have already pointed out that the class I legal heirs shown in the schedule is applicable only to the male dying intestate, the same cannot be taken into consideration for considering the claim of the mother in this case.

7. Therefore, we find that the Writ Court is not justified in allowing the writ petition by directing the Tahsildar to include the name of the writ petitioner also as the one of the legal heirs of the deceased daughter.

8. Accordingly, this Writ Appeal is allowed and the order of the Writ Court is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

skn



To

The Tashildar,
Theni Taluk,
Theni District.

+1CC TO MR.P.MUTHU VIJAYA PANDIAN, Advocate Sr. No.80784
+1CC TO MR.PALA.RAMASAMY, Advocate Sr. No. 81032

Judgment made in
W.A(MD)No.535 of 2019
and
C.M.P(MD)No.4516 of 2019
08.08.2019

NS (CO)
TR (27.08.2019) 5P 4C