



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2019

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P (MD)No.1266 of 2019

Alagammai

.. Petitioner/ Plaintiff

Vs.

1.The State of Tamil Nadu rep. by
The District Collector,
Collectorate,
Tiruchirappalli.

2.The Thasildar,
Thasildar Office,
Trichy East,
Townhall Street,
Tiruchirappalli.

.. Respondents/ Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the non-speaking order of return in O.S.No.unnumbered/2019 dated 23.01.2019 and direct the District Munsif Court, Tiruchirappalli to number the O.S.No.unnumbered/2019 and allow the civil revision petition.

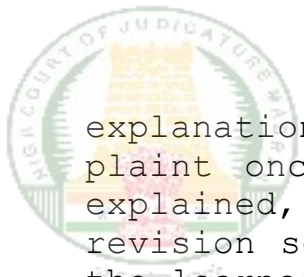
For petitioner : Mr.J.Jeyakumaran

For Respondents : Mr.J.Gunaseelan Muthiah,
Addl. Govt. Pleader.

ORDER

Against the return of plaint, this revision petition has been filed.

2.The petitioner / plaintiff filed a suit seeking to direct the 2nd respondent / 2nd defendant to issue legal heirship certificate by adding the newly adopted son 'Chokkalingam' as legal heir of her husband, viz., the deceased Muthu, on the basis of the registered adoption deed. The learned Judge returned the plaint stating as to how the adoption is valid under the provisions of Hindu Adoption and Maintenance Act, 1956. The petitioner / plaintiff has represented the plaint giving



explanation in detail. Since the learned Judge has returned the plaint once again stating that the previous query has not been explained, the petitioner / plaintiff has filed the present revision seeking to set aside the order of return and also direct the learned Judge to number the plaint.

WEB COPY

3.The learned counsel for the petitioner / plaintiff would submit that the petitioner has represented the plaint stating that as per the provisions contemplated under Section 8 of the Hindu Adoptions and Maintenance Act, 1956, even a female Hindu, who is of sound mind and is not a minor, has the capacity to take a son or daughter in adoption and the only condition is that she must get consent from her husband, unless the husband has completely and finally renounced the world and in the present case, the husband of the petitioner / plaintiff died on 13.10.2017 and hence seeking consent from him, does not arise. But, the Court below has returned the plaint once again as the previous return has not been complied with. Thus, he prayed to set aside the order of return and also direct the learned Judge to number the plaint.

4.Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the materials available on record.

5.Perusal of records shows that the learned Judge has returned the plaint stating as to how the adoption deed is valid under the provisions of Hindu Adoption and Maintenance Act, 1956. Section 8 of the Hindu Adoptions and Maintenance Act, 1956, reads as follows:

"8.Capacity of a female Hindu to take in adoption:

Any female Hindu :-

(a)who is of sound mind,

(b)who is not a minor, and

(c)who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption".

6.The husband of the petitioner / plaintiff died on 13.10.2017. Subsequently, the petitioner / plaintiff has adopted the said Chokkalingam vide registered adoption deed dated 19.06.2018. Section 8 of the said Act is very clear that a female Hindu has the capacity to take a son or daughter in adoption and after the death of her husband, there is no question of getting consent from her husband. The Court below without considering the above aspect, has erroneously returned the plaint. Therefore, the

<https://hccservices.courts.gov.in/reserved>



learned Judge is directed to number the suit and dispose of the same on merits and in accordance with law. The civil revision petition is allowed accordingly. No costs.

7. Registry is directed to return the original plaint filed alongwith the revision, to the petitioner / plaintiff forthwith, after retaining a photocopy of the same.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Munsif,
Tiruchirappalli.

2.The District Collector
Collectorate
Tiruchirappalli

3.The Thasildar
Thasildar Office,
Tiruchy East,
Townhall Street,
Tiruchirappalli.

4.The Record Keeper,-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.JEYA KUMARAN, Advocate (SR-82155[F] dated 19/08/2019)

smn

**ORDER MADE IN
C.R.P (MD)No.1266 of 2019
16.08.2019**

KM/ (05.09.2019) 3P 7C