

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.4830 of 2015
and M.P.No.1 of 2015

1. V.Mathuraj (deceased)
 2. Eswari
 3. Sathiyavanimuthu
 4. Vadivel
 5. Megala **
- ... Petitioners
- ** Petitioners 3 to 5 are substituted LRs of deceased first petitioner as per order dated 05.12.2019 in WMP No.18109 of 2016

Vs

1. The District Collector,
Salem, Salem District.
 2. The Revenue Divisional Officer,
Mettur, Mettur Taluk,
Salem District.
 3. The Tahsildar,
Mettur, Mettur Taluk,
Salem District.
 4. Tmt.Palaniammal
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in oo.Mu 454/2015(A6), dated .01.2015 passed by the third respondent and quash the same, consequently directing the third respondent to issue a legal heirship certificate in favour of the petitioners.

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For Petitioners:Mr.M.Elango

For Respondents:Mr.V.Shanmuga Sundar,
Special Government Pleader for RR 1-3

O R D E R

This writ petition is heard through Videoconferencing, on account of the COVID-19 pandemic situation.

2. In view of the order, this Court proposes to pass, notice to the fourth respondent is not necessary.

3. Assailing the order passed by the third respondent in Oo.Mu.No.454/2015 (A6), the petitioner filed this writ petition. The consequential prayer is seeking for a direction to the third respondent to issue a legal heirship certificate in their favour.

4. The second petitioner Eswari and the deceased first petitioner Mathuraj are the daughters and son of Veeran and Palaniammal. The petitioners 3 to 5 are the children of the deceased Mathuraj. The mother of the deceased first petitioner and the second petitioner Palaniammal died long back and after her death, their father Veeran married one Pachaiaammal as second wife. There was no issues to them out of the said wedlock.

4.1. A property in site No.26, Block No.28 measuring 1500 sq.ft. at Mettur Village in Mettur Taluk was assigned to Pachaiaammal, who is the stepmother of the deceased first petitioner and the second petitioner. Veeran died on 30.03.2013. Thereafter, the stepmother, namely, Pachaiaammal died on 17.11.2013. For the death of the father Veeran, a legal heirship certificate was obtained by the petitioner in proceedings Pa.Mu.No.9551/2013/A1 on 30.09.2013. Though the stepmother Pachaiaammal was alive on that date, curiously, her name had not been included in the legal heirship certificate for the death of Veeran. After the death of the said Pachaiaammal on 17.11.2013, an application for legal heirship certificate was applied for by the deceased first petitioner and the second petitioner, as her stepchildren.

4.2. The application was forwarded to the Revenue Inspector and to the Village Administrative Officer (VAO) for verification. The VAO of Navapatti Group Village has given a report stating that in the enquiry, it was ascertained that the deceased first petitioner and the second petitioners are the only legal heirs of the deceased Pachaiaammal. The said report was affirmed by the Revenue Inspector, Mettur Firka to the effect that the said two persons are the legal heirs of the deceased Pachaiaammal. The above report and recommendations were issued by the VAO and the Revenue Inspector, after due enquiry of the local villagers and was sent to the third respondent for issuance of the legal heirship certificate.

4.3. However, the third respondent had rejected the application stating that the deceased first petitioner and the second petitioner were not the direct legal heirs and hence,

directed them to approach the Civil Court and get their grievance redressed. Hence, the present petition.

5. The Zonal Deputy Tahsildhar, Mettur Dam, filed a counter-affidavit stating that the fourth respondent is the sister of the deceased Patchaiammal and she has also been claiming share in the property. It is also stated that the said Patchaiammal's father and mother are no more and there are no other heirs for the deceased Patchaiammal.

6. Heard the learned counsel for the petitioners and the learned Special Government Pleader.

7. Learned Special Government Pleader placed reliance on the Circular No.9/2019 in Rc No.RA5(3)/180/2017, dated 24.09.2019 and stated that the Tahsildars are directed not to issue Legal Heir Certificates in the absence of Class-I heirs and as the fourth respondent is the sister of the deceased Patchaiammal and the petitioners were also not the direct legal heirs of the deceased Patchaiammal, the application for legal heirship certificate was rejected for the petitioners.

8. The authorities have lost sight of the fact that the legal heirship certificate is applied for a deceased female Hindu. Section 15 of the Hindu Succession Act, 1956 deals with the heirs of the deceased female Hindu. As per Section 15(1)(b) of the said Act, in the absence of the class-I heirs, the heirs of the husband will become the legal heirs. It is apt to reproduce the said provision, as hereunder :

"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."

9. In this case, if the said deceased Patchaiammal is the wife married to Veeran, after the death of Palaniammal, the children born to the said Palaniammal, namely, the deceased first petitioner and the second petitioner would be the legal heirs of her husband. Therefore, the deceased first petitioner and the second petitioner, being the heirs of her husband, will be the legal heirs for the deceased Patchaiammal. Hence, there cannot be any impediment for issuing the legal heirship certificate in favour of the petitioners.

10. It is also stated in this case that the deceased Patchaiammal had left a Will in favour of the deceased first petitioner and the second petitioner bequeathing all her rights in the above property, which also indicates that she has treated them as her children. Nonetheless, while issuing the legal heirship certificate, the authorities are duty bound to make field enquiry about the relationship of the parties. Despite the recommendations made, based on the field enquiry, by the VAO and the Revenue Inspector, the Tahsildhar without adverting to the same, had rejected the application of the petitioners only on the ground that they are not the direct legal heirs without averting to Section 15(1)(b) of the Hindu Succession Act, 1956.

11. Though reliance is placed on the Circular No.9/2019 in Rc No.RA5(3)/180/2017, dated 24.09.2019 to substantiate the said action, it is relevant to state that the said Circular too failed to avert to Section 15 of the Hindu Succession Act, 1956, but only refers to Section 8 of the said Act, which deals with succession of males. In such circumstances, the said Circular renders no assistance to the instant case.

12. In the result, the impugned order dated nil signed on 06.02.2015 is set aside and the matter is remanded back to the third respondent to consider the application for issuance of legal heirship certificate to the petitioners afresh, and pass orders on merits and in accordance with law, in the light of the recommendations of the VAO and the Revenue Inspector, after affording opportunity of personal hearing to the petitioners and the parties concerned, within a period of twelve weeks from the date of receipt of a copy of this order.

13. This writ petition is ordered accordingly. There will be no orders as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Salem, Salem District.
2. The Revenue Divisional Officer,
Mettur, Mettur Taluk,
Salem District.

3. The Tahsildar,
Mettur, Mettur Taluk,
Salem District.

W.P.No.4830 of 2015

VSN II (CO)
CB(25/09/2020)



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