

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.12569 of 2019 and
WMP.Nos.12826 and 23565 of 2019

S.Kamalakannan

.. Petitioner

..Vs..

The Tahsildar,
Perambur Taluk Office,
Perambur, Chennai - 600 011.

..Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent relating to the Impugned order of rejection passed by the respondent in the petitioner's Online Legal heir ship application dated 01.03.2019 bearing No.TN-7201903011940, quash the same and consequentially direct the respondent herein to issue Legal Heir ship Certificate of Late.S.Dhanalakshmi, by including the name of the petitioner herein, within a time bound manner, to be stipulated by this Court.

For Petitioner : Mr.R.Venkat Raman

For Respondent : Mrs.P.Rajalakshmi,
Additional Government Pleader

ORDER

The petitioner namely S.Kamalakannan has filed the present writ petition in the nature of Certiorarified Mandamus, with relation to the order of rejection passed by the respondent namely Tahsildar, Perambur Taluk Office, Perambur, Chennai, rejecting the online legal heirship application of the petitioner dated 01.03.2019 bearing No.TN-7201903011940 and to quash the same and direct the respondent to issue legal heirship Certificate in favour of the petitioner with relation to the death of Late.S.Dhanalakshmi who is the mother of the petitioner.

2. The petitioner was adopted by the said S.Dhanalakshmi by a deed of adoption dated 08.08.1996. At that time, the said D.Dhanalakshmi was a widow having lost her husband V.Sambasivam. The petitioner's biological parents S.Loganathan and L.Latha, by the said adoption deed, had given in adoption and S.Dhanalakshmi had taken in adoption, the petitioner who was at that particular point of time an infant aged about seven months. The Tahsildar/respondent, cannot dispute this fact. Subsequently, as the document filed along with this writ petition shows, the petitioner had the benefit of a community certificate being issued by the Tahsildar, Purasaiwalkam Taluk, Chennai on 19.02.1999. In the educational records he had shown his adopted parents as his parents. The petitioner had filed a Transfer certificate of S.A.Engineering College, Chennai - 600 077 wherein he had given the name of his father as V.Sambasivam who was the husband of his adoptive mother namely D.Dhanalakshmi. The petitioner has also enclosed the copy of the Family Card for the year 2005-2009 in which his name is found along with S.Dhanalakshmi and Thulasi who is the mother of S.Dhanalakshmi.

3. In view of the fact that the Government authority i.e the very same Tahsildar of Perambur Taluk had issued a community certificate for the petitioner, showing his mother as Dhanalakshmi, this Court cannot and does appreciate the stand taken that the adoption deed has to be rejected. This stand is taken in view of the circular dated 24.09.2019 in which the Tahsildar has been directed to issue the legal heirship certificate after confirming the individual has been adopted legally and also produces the evidence as per the Hindu Succession Act, 1956. However, the learned counsel for the petitioner has relied on the Judgment of the Hon'ble Supreme Court reported in AIR 2013 SC 974 in Mst.Param Pal Singh through father Vrs. National Insurance Company and Ors, wherein the Hon'ble Supreme Court had examined the provisions of adoption vis-a-vis the Registration Act and more particularly Section 17 of the Registration Act, and had stated that under Section 17 of the Registration Act, it had not been stated that an adoption deed should be compulsorily registered. Paragraph no.12 is extracted from the Judgment of the Supreme Court supra for better appreciation:

"12. In this context, it will be worthwhile to note the requirement of registration of an Adoption Deed. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents mentioned in Sub-section 1 of Section 17 which mandatorily required registration. Sub-section 3 of Section 17 only refers to the mandatory requirement

of registration of an authorization that may be given for adopting a son executed after 01.01.1872 if such authorization was not conferred by a Will. Dealing with the said provision relating to authorization, it has been held in the decision reported in Vishvanath Ramji Karale v. Rahibai Ramji Karale and Ors. MANU/MH/0122/1930: AIR 1931 Bom 105 by a deed of adoption as distinguished from authority to adopt does not require registration."

4. As stated by the Hon'ble Supreme Court, and as is seen from Section 17 of the Registration Act, an adoption deed, is not one of the deeds which are compulsorily registered. There is no dispute regarding the factum of adoption. The Tahsildar had not stated that there was a rival claimant to claim the right and interests of S.Dhanalakshmi. It is also pointed out by the learned counsel that the ratio laid down by the Hon'ble Supreme Court has also been followed by this Court.

5. In addition, attention is drawn to the order of a learned single Judge of Madurai Bench of this Court dated 01.08.2019 in W.P.(MD).No.6784 of 2017 in Minor Soorya Prakash Vs. the Tahsildhar, Pudukottai Taluk office, Pudukottai District in which specifically, the Judgement in AIR 2013 (3) 3 SCC 974 has been quoted with approval.

6. In order to maintain consistency, this Court directs the respondent to issue a fresh Legal Heirship Certificate to the petitioner with respect to the interests of his adoptive mother S.Dhanalakshmi who died on 19.12.2018.

7. With the above observation, this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(JJ Act)

//True Copy//

Sub Assistant Registrar

vum

To

The Tahsildar,
Perambur Taluk Office,
Perambur, Chennai - 600 011.

+1cc to Mr.A.Sikkandar, Advocate SR.793
+1cc to the Government Pleader SR.1344

W.P.No.12569 of 2019 and
WMP.Nos.12826 and 23565 of 2019

GJ(CO)
CB(12/02/2020)



WEB COPY