

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.14998 of 2020

Lakshmi Jagannathan

... Petitioner

Vs.

The Thasildar,
Tambaram Taluk,
Taluk Office Building,
1st Floor, GST Road,
Tambaram,
Chennai-600 045.

... Respondent

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 13.01.2020 passed by the respondent in the Legal heir Certificate Application No.TN-7201911121486, dated 12.11.2019 and quash the same and direct the respondent to issue the Legal Heirship Certificate to the petitioner.

For Petitioner : Ms.K.Sumathi

For Respondent : Mr.R.S.Selvam,
Government Advocate

O R D E R

The order dated 13.01.2020 passed by the respondent rejecting the Application No.TN-7201911121486 of the petitioner dated 12.11.2019, which was filed seeking Legal heir Certificate is put to challenge in this writ petition. The petitioner sought for a consequential direction to the respondent to issue the Legal Heirship Certificate.

2. The petitioner married one Ramachandran on 28.10.2009. For both of them, it is their second marriage. One Bhargavi Shankar was the petitioner's first husband having tied the knot on 21.08.1997 and they got two male children, namely, Krishnaswaroop Varati and Yuvan Harsha Varati. However, by mutual consent, which was recorded in the form of a settlement

deed dated 06.03.2009, their marriage was dissolved on 30.03.2009 in M.C.No.632 of 2009 on the file of the Principal Judge, Family Court, Bangalore. Likewise, Ramachandran married one Anurada on 19.12.1996 and out of the said wedlock, they were blessed with two male children, namely, Sanath and Sharad. They obtained a decree of divorce on 10.07.2009 in O.P.No.1691 of 2009 on the file of the II Additional Family Court, Chennai.

3. On 09.10.2019 Ramachandran died. The petitioner filed Legal Heirship Certificate Application No.TN-7201911121486 before the respondent on 12.11.2019 annexing required documents. The petitioner also filed a notary affidavit on 15.11.2019 stating that one S.Senbagam, mother of the deceased Ramachandran, the sons of the deceased born through his first wife, namely Sanath, Sharad and herself are the legal heirs. The petitioner also claimed that the first wife of the deceased Anurada and her sons had also attended an enquiry on 12.12.2019 and made depositions in writing. However, the respondent passed the impugned order on 13.01.2020 negating her request stating that a question arose in respect of the "natural guardian" of two boys, namely, Krishnaswaroop Varati and Yuvan Harsha Varati, who were born through the petitioner's first husband. One of the sons has already attained majority. Besides, the mother is alive as a natural guardian for them. Why should the respondent be worried about Guardianship of children, while issuing a Legal Heirship Certificate is un-understandable.

4. The petitioner submitted a representation on 05.02.2020 categorically stating that her two children cannot be the legal heirs of her second husband Ramachandran, who is not their biological father. Thus, she reiterated her request for issuance of legal heirship certificate favouring herself, mother and sons of the deceased. Since the same yielded no fruits, she is before this Court with this petition.

5. Heard the learned counsel for the petitioner and the learned Government Advocate and perused the materials available on record.

6. It is to be stated that there is no dispute qua the relationship between the parties. When there is no dispute among them, the authorities cannot dispute the fact and give any other interpretation to the relationship. The petitioner herself stated that she is the second wife of the deceased, after the dissolution of the first marriage. She did not include the names of her children born through her first husband in the application. On the other hand, she sought for the legal heirship certificate only for herself, the mother-in-law and sons of the deceased, who were born through his first wife. The first wife of the deceased, whose marriage with the deceased was

dissolved in the manner known to law, also appeared before the respondent and deposed in writing. Had there been any dispute between the two wives of the deceased, then the respondent is justified in passing the impugned order directing the petitioner to approach the civil court for appropriate remedies. Admittedly, the persons named in the application are all Class-I legal heirs. But the respondent without weighing all these materials mechanically passed a cryptic and stereo-typical order without application of mind, thereby failed to follow the guidelines issued by the Government in various circulars and orders. When the petitioner herself sought for the legal heirship certificate including the sons of the first wife of the deceased, excluding her sons born through her first husband, there is no necessity for the respondent to venture into the natural guardian question of her sons.

7. At this juncture, it is apt to quote Section 8 of the Hindu Succession Act, 1956, 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."

Though the respondent and other revenue officials cannot give interpretation of the law of Succession, which is the normally the business of the Courts, they should advert to the Class I, Class II and other heirs enlisted in the said Act and basics of personal laws to apply their mind, while dealing with the applications for issuance of Legal Heirship Certificate, which was expected of them, while conferring on them the power to issue the legal heirship certificates.

8. Discerning the difficulties of the public in obtaining the Legal Heirship Certificate from the revenue authorities citing one or the other reason and other lacunae in the circulars issued by the Commissioner of Revenue Administration, which are the guidelines for the revenue officials at field level, this Court in the order dated 27.07.2020 in W.P.No.5490 of 2017 (J.Babu Vs. The Tahsildar, Tharangampadi Taluk, Nagapattinam District), directed the Commissioner of Revenue

Administration to consider various orders passed by this Court and after touching upon the provisions of the Hindu Succession Act, in particular Section 15 of the said Act and other personal laws and to reissue revised guidelines and instructions in the light of those orders and provisions to the revenue officers to issue legal heir certificate strictly in accordance with the circulars in its letter and spirit. In the said order, it was further observed that this Court repeatedly held that even there were class II heirs, the difficulty to identify the members of the class II heirs by the revenue authorities cannot be the reason to reject the request for issuance of legal heir certificates and if the guidelines of field verification, etc., are devotedly followed by the field level officers, i.e., VAO, RI and Tahsildars, in their letter and spirit, the so-called lis and other issues surrounding Class II legal heirs could well be avoided. It is to be reiterated that the Commissioner of Revenue Administration shall sensitize the officials in the order of hierarchy in the revenue Department about the applicability of personal law and shall ensure that merely because there were two wives, the claim of the applicants cannot be rejected, without ascertaining the factual position.

9. In view of the aforesaid discussion, it is clear that the impugned order is liable to be set aside. Though an appeal remedy is provided against the order of the Tahsildar with the Revenue Divisional Officer, having regard to the facts and circumstances of the case and failure of the respondent to exercise the power conferred on him, the petitioner cannot be compelled to exhaust the appellate remedy and thus, she is entitled for the issuance of the Legal Heirship Certificate without exercising such an appellate remedy.

10. In the result, this writ petition is allowed and the respondent is directed to issue legal heirship certificate to the petitioner, as has been requested in her application dated 12.11.2019 and the representation dated 05.02.2020. The said exercise shall be complete within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

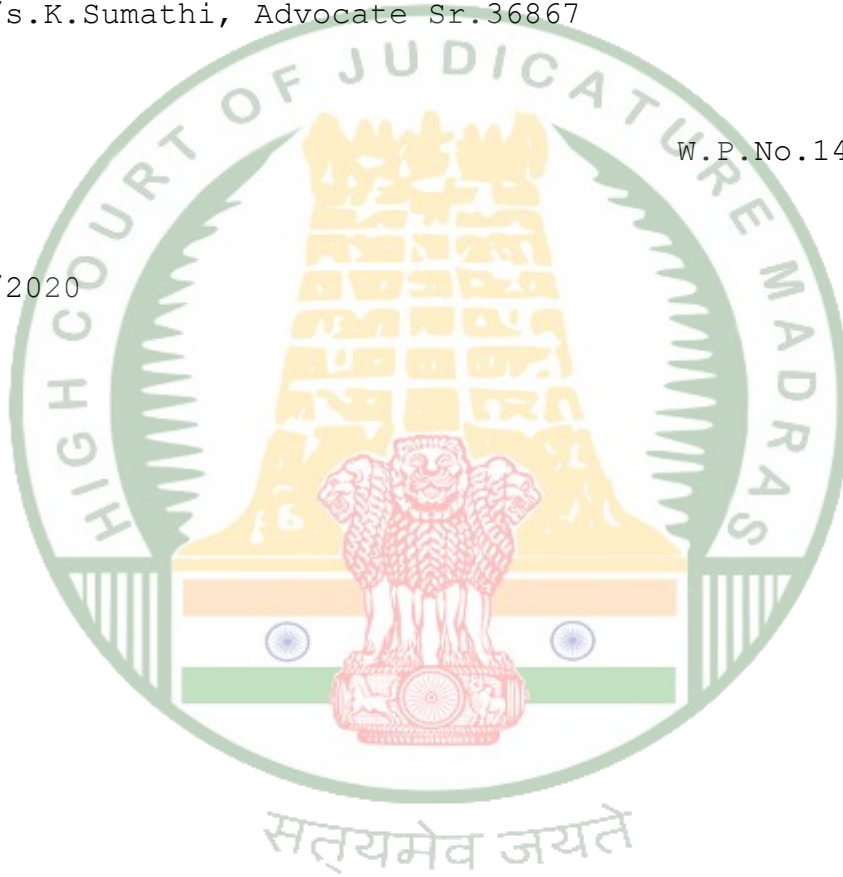
To

The Thasildar,
Tambaram Taluk,
Taluk Office Building,
1st Floor, GST Road,
Tambaram, Chennai-600 045.

+1cc to the Government Pleader Sr.37176
+2cc to M/s.K.Sumathi, Advocate Sr.36867

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