

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
W.P.No.16787 of 2020
(Heard through VC)

P.S.Amirthavalli

...Petitioner

vs

1. The District Collector,
Chengalpet District.
2. The Tahsildar,
Thirukazhukundram Taluk,
Desumugipet Street,
Cehngalpet District - 603 109.
3. The Village Administrative Officer,
Pudupattinam Vilalge,
East Coast Road,
Near DAE Township Kalpakkam,
Thirukazhu Kundram Taluk,
Chengalpet District - 603 109

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to conduct an enquiry on the basis of petitioner's representation dated 19.10.2020 and consequently issue Legal Heirship Certificate for Mrs.Malini, Wife of P.S.Devanadhan within the time frame as fixed by this Court.

For Petitioner : Mr.K.Suresh
For Respondents : Mr.R.S.Selvam
Government Advocate

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O R D E R

This writ petition is filed for a mandamus, directing the second respondent to conduct an enquiry on the basis of the representation dated 19.10.2020 given by the petitioner and to issue Legal Heirship Certificate for the death of Mrs.Malini, W/o. P.S.Devanadhan.

2. The petitioner is an octogenarian. Her son, namely, P.S.Devanathan was married to one Malini and they had a daughter by name Ramya. The said P.S.Devanathan, Malini and their daughter, Ramya died in a road accident on 21.11.2018. After the death of the son, as a sole surviving Class-I legal heir, the petitioner, who is the mother, applied for legal heirship certificate. After due enquiry, the legal heirship certificate was issued by the Tahsildar, Mambalam Taluk on 29.01.2019. The daughter-in-law of the petitioner, Malini was working in the Atomic Energy Education Society and she was also having a residential house at Kalpakkam. As per Section 15 of the Hindu Succession Act, 1956, in the absence of son, daughter or husband to a female Hindu, the heirs of the husband are the legal heirs.

3. It will be appropriate to extract Section 15 of the Hindu Succession Act, 1956 for better understanding.

Section 15(1) in The Hindu Succession Act, 1956

- (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.

4. As per the above said provisions of law, the petitioner, who is the mother-in-law of the deceased Malini, will be the legal heir coming under the second category, i.e, upon the heir of the husband. Unfortunately, the petitioner's son, daughter-in-law and the grand daughter died in the same accident. Therefore, the deceased Malini did not have her husband or daughter surviving her as legal heirs. Hence, Section 15(1)(b) of the Succession Act, is only applicable, the petitioner being the heir of the husband. Therefore, the petitioner is entitled to claim the death benefits of her daughter-in-law and the assets owned by her as per Section 15 of the Hindu Succession Act.

5. It is stated that the deceased Malini did not have the father and mother. Even presuming that the parents of the said Malini were to be alive, in the orders specified in Section 15 (1)(a) of the Act, they come only after the heirs of the husband.

6. As the petitioner is the legal heir of the husband of the deceased, the parents of the deceased will come only after that. As stated supra, the Tahsildar, Mambalam Taluk has issued the legal heirship certificate for the death of the son of the

petitioner P.S.Devanathan, after due enquiry. However, when the petitioner applied for the legal heirship certificate for the death of the daughter-in-law, the respondents directed her to go before the Civil Court to get heirship declared.

7. In the meanwhile, the learned Government Advocate appearing on behalf of the respondents, upon instructions, states that on 02.12.2020, the Tahisildar, Thirukazhukundram, who is the second respondent, had passed an order, stating that the petitioner is the Class-II legal heir and hence, the legal heirship certificate cannot be issued and that the petitioner has to approach the Civil Court.

8. In order to decide who are the legal heirs of a female Hindu under category (b) of Section 15 (1) of the Hindu Succession Act, it is not necessary to go back to the date of the death of the husband, to ascertain, who were the heirs at that time. Unfortunately, in this case, the husband, wife and child perished on the same date. Therefore, the succession for both the husband and the wife opened on the same date. Her heirs under Section 15(1)(b) will have to be ascertained, as the succession to her husband had opened already at the time of her death.

9. The devolution upon the heirs of the husband of the female intestate shall be in the same order and according to the same Rules, as would have applied, if the property belonged to the husband and had died intestate in respect thereof immediately after her death. Unless it is established that there are other heirs specified in Section 15(1)(a), all her property will devolve upon the heirs of the husband, as heirs specified therein.

10. As both the husband and wife died on the same date, the petitioner, as the heir of the husband of the deceased Malini, is the only sole surviving legal heir. Without adverting to the Rule of Succession, the Tahsildar, Thirukazhukundram, erroneously had rejected the application made by the petitioner on 22.07.2020, vide order dated 02.12.2020, which is absolutely erroneous and without application of mind and hence, the same is set aside. The Tahsildar, Thirukazhukundram is directed to issue the legal heirship certificate, based on the application made by the petitioner on 22.07.2020, after due enquiry, within a period of two weeks from the date of receipt of a copy of this order.

11. With the above directions, the Writ Petition is disposed of. No costs.

12. Post the Writ Petition 'for compliance" on 12.01.2021.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srn

To

1. The District Collector, Chengalpet District.
2. The Tahsildar,
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Copy to

The Section Officer, Writ Section,
High Court, Madras.

+2ccs to Mr.Suresh, Advocate, S.R.No.39629
+1cc to the Government Pleader, S.R.No.39804

W.P.No.16787 of 2020

MG(CO)
KKV/15/12/2020

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