BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.12.2020**

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P(MD).No.19170 of 2020
and W.M.P.(MD) No.16031 of 2020
(Through Video Conference)

Hema Anitha .. Petitioner

Vs.

1) The State of Tamil Nadu,
Rep. by its Additional Chief Secretary/
Commissioner Of Revenue Administration,
Chepauk, Chennai 600 005

2) The District Collector,
Madurai District, Madurai.

3) Thasildar,
Madurai West, Madurai. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent, rejecting the petitioner's application for issuance of the Legal Heirship Certificate of her deceased husband and quash the same and consequently direct the third respondent to consider the petitioner's application dated 27.11.2020 vide application No.TN-720201127434 and to issue the Legal heirship Certificate to the petitioner as per the provisions of the Indian Succession Act.

For Petitioner : Mrs.N.Krishnaveni,
Senior Counsel for
Mr.Thiyagarajan.P

For Respondents: Mrs.M.Rajeswari,
Government Advocate

O R D E R

This writ petition has been filed challenging the order dated 27.11.2020 passed by the third respondent rejecting the petitioner's application for Legal Heirship Certificate for her deceased husband Kamalesh Premkumar who died on 13.07.2020. The third respondent has rejected the petitioner's application on the ground that in her application for issuance of Legal Heirship certificate, the mother of the deceased Kamalesh Premkumar has not joined.

2. Mrs.M.Rajeswari, learned Government Advocate accepts notice for the respondents. By consent of both sides, this writ petition is taken up for final disposal at the stage of admission itself.

3. Mrs.N.Krishnaveni, learned Senior Counsel for the petitioner drew the attention of this Court to Section 33 of the Indian Succession Act, 1925 which applies to Christians, as the petitioner as well as the deceased husband are Christians.

4. Section 33 of the Indian Succession Act reads as follows:-

Section 33:

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

Where the intestate has left a widow-

(a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;

(b) if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;

(c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.

It is clear from the aforementioned section, that the wife and lineal descendants are alone entitled for share in the property owned by the deceased husband.

5. The learned Senior counsel for the petitioner also drew the attention of this Court to an order dated 27.07.2020 passed by another learned Single Judge of this Court in W.P.(MD) No.5940 of 2017. In that case also, the learned Single Judge had considered a similar situation, wherein an application for issuance of Legal Heirship Certificate was rejected and has observed that, when the Act provides for a particular mode of succession, the Tahsildar will have to follow the same strictly and there is no impediment for him to issue the Legal Heirship Certificate in accordance with the said mode of succession contemplated under the Succession laws.

6. As seen from the impugned order, arbitrarily and without assigning any reason, the application of the petitioner, seeking for issuance of Legal Heirship Certificate for her deceased husband, has been rejected on the ground that the mother of the deceased has not

joined together while submitting an application for Legal Heirship Certificate.

7. Section 33 of the Indian Succession Act, 1925, as observed earlier, which applies to Christians as in the case of the deceased Kamalesh Premkumar has not been considered by the third respondent while passing the impugned order rejecting the petitioner's application for issuance of Legal Heirship Certificate.

8. For the foregoing reasons, this Court is of the considered view that the third respondent by total non-application of mind, has passed the impugned order without giving due consideration to Section 33 of the Indian Succession Act, 1925 which clearly stipulates that only the wife and other lineal descendants are the legal heirs of a deceased husband.

9. In the case on hand, the petitioner is the widow of the deceased husband and she is having one son and they alone are entitled to be declared as legal heirs for the deceased Kamalesh Premkumar who died on 13.07.2020. However, it is for the third respondent to issue the Legal Heirship Certificate. Since the impugned order has been passed by total non-application of mind and has not considered Section 33 of the Indian Succession Act, 1925, the same is quashed and the matter is remanded back to the third respondent for fresh consideration.

10. In the result, the impugned order passed by the third respondent on 27.11.2020 is hereby quashed and the matter is remanded back to the third respondent for fresh consideration and the third respondent shall pass final order on merits and in accordance with law in the light of (a) Section 33 of the Indian Succession Act, 1925 and (b) Decision rendered by this Court on 27.07.2020 in W.P.(MD) No.5940 of 2017 in the case of ***J.Babu vs the Tahsildar*** within a period of four weeks from the date of receipt of a copy of this order after giving sufficient opportunity of hearing to the petitioner.

11. With the aforesaid directions, this writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.16031 of 2020 stands closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar(CS)

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To:

1) The Additional Chief Secretary/
Commissioner Of Revenue Administration,
Chepauk, Chennai 600 005

2) The District Collector,
Madurai District, Madurai.

3) The Thasildar,
Madurai West, Madurai.

+1 CC to M/s.GP (SR-27059[F] dated 23/12/2020)

+1 CC to M/s.P.THIYAGARAJAN, Advocate SR-27137[F] dated 23/12/2020

Order made in
W.P(MD).No.19170 of 2020

ma(CO)
TR(23.12.2020) 4P 6C