

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.2630 of 2020

and

WMP.Nos.3057 & 3058 of 2020

J.Nargis

... Petitioner

Vs

1. The Revenue Divisional Officer,
Kallakurichi Taluk, Kallakurichi.

2. The Tahsildar,
Kallakurichi Taluk, Kallakurichi.

3. Kairoon Bi

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the proceedings bearing NIL and dated 29.01.2013 and to quash the same as illegal and without jurisdiction, and to consequently direct the 2nd respondent to conduct an enquiry afresh and issue a legal heirship certificate to the petitioner.

For petitioner

... Mr.K.Sharath Chandran

For Respondents

... Mr.V.Shanmuga Sundar
SGP for R1 & R2

... Mr.Suganthan for
M/s.N.Manokaran for R3

ORDER

Mr.V.Shanmuga Sundar, learned Special Government Pleader accepts notice for respondents 1 and 2 and Mr.Suganthan, learned counsel accepts notice for the third respondent.

2. By consent of both the parties, this writ petition is taken up for final disposal at the time of admission itself.

3. Heard Mr.K.Sharath Chandran, learned counsel for the petitioner.

4. This writ petition has been filed challenging the order dated 29.01.2013 passed by the second respondent rejecting the petitioner's application seeking for issuance of Legal Heirship certificate on the ground that the petitioner has to approach the Civil Court. It is the contention of the petitioner that without affording a fair hearing and without giving any prior notice to her, the impugned order has been passed.

5. According to the petitioner, she is the adopted daughter of the 3rd respondent as well as the deceased Abdul Jabbar, who died on 21.09.1992. The petitioner has applied for Legal Heirship certificate for the deceased Abdul Jabbar, which was rejected under the impugned order by the second respondent.

6. The third respondent, who is the wife of the deceased Abdul Jabbar has filed a counter before this Court denying the petitioner as adopted daughter of Abdul Jabbar. However, it is the contention of the petitioner that the third respondent herself has admitted that the petitioner is her adopted daughter, as seen from the settlement deed, dated 19.07.2004 and the release deed dated 05.08.2004. However, the third respondent has denied the same in the counter affidavit and would also submit that the petitioner having already filed the suit in O.S. No.529 of 201 on the file of the District Munsif Court, Kallakurichi, the only remedy available to the petitioner is to approach the Civil Court. According to her, the 2nd respondent has rightly rejected the petitioner's application seeking for Legal Heirship certificate for the deceased Abdul Jabbar.

7. It is also contended by the 3rd respondent that as per Circular, dated 09.08.2017 issued by the Revenue Administration, Chennai - 5, the second respondent is not empowered to reject the Legal Heirship Certificate, in case of an adopted child.

8. This Court has perused and examined the impugned order passed by the second respondent as seen from the impugned order, there is no reference to any prior notice having been issued to the petitioner before passing of the rejection order of the petitioner application seeking for Legal Heirship Certificate to Abdul Jabbar. The petitioner has primarily challenged the impugned order on the ground that violation of principles of natural justice. The petitioner has also produced before this Court the settlement deed dated 19.07.2004 as well as the

release deed dated 05.08.2004, wherein, according to her, the third respondent has recognised the petitioner as the daughter of Abdul Jabbar.

9. All the above mentioned factors have not been considered by the second respondent in the impugned order. Therefore, this Court is of the considered view that principles of natural justice has been violated by the second respondent, while passing the impugned order. On this ground, the impugned order will have to be necessarily quashed and remanded back to the second respondent for fresh consideration on merits and in accordance with law, after hearing all necessary parties, including the third respondent.

10. Insofar as the contention of the third respondent that statutory appellate remedy is available to the petitioner, if aggrieved by the impugned order is concerned, the same will not apply, since, as observed earlier, the second respondent has violated the principles of natural justice while passing the impugned order.

11. For the foregoing reasons, the impugned order, dated 29.01.2013 is hereby quashed and the matter is remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders on merits and in accordance with law, after hearing the petitioner as well as the third respondent and other necessary parties, if any, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view on the merits of the case.

12. With the aforesaid direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Revenue Divisional Officer,
Kallakurichi Taluk,
Kallakurichi.

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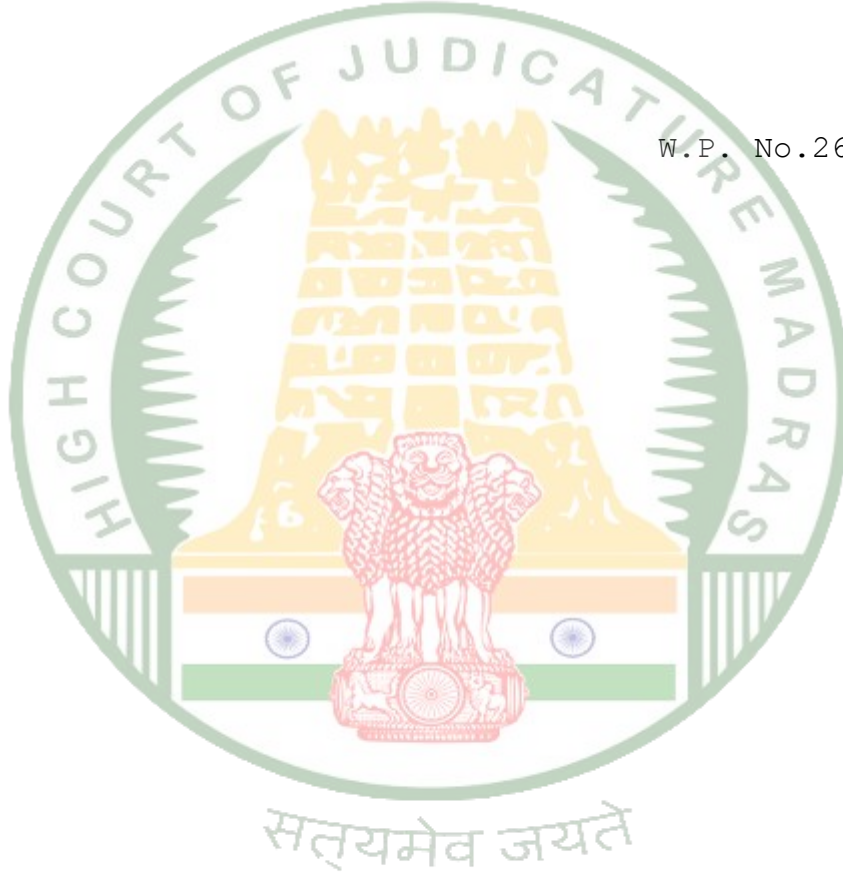
2. The Tahsildar,
Kallakurichi Taluk,
Kallakurichi.

+1cc to Mr.GOVIND CHANDRASEKHAR, Advocate, S.R.No.7557

+1cc to Mr.N. MANOKARAN, Advocate, S.R.No.7274

SMI (CO)
SM/24/02/2021

W.P. No.2630 of 2020



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