

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.378 of 2021

D.Gopi		... Petitioner
	Vs.	
Nil		... Respondent

Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the rejection of unnumbered S.C.O.P. dated 29.01.2021 on the file of the District Munsif cum Judicial Magistrate, Pallipattu.

For Petitioner : Mr.S.C.Viswanth

ORDER

The present Civil Revision Petition has been filed to set aside the rejection of unnumbered SCOP dated 29.01.2021 on the file of the District Munsif cum Judicial Magistrate, Pallipattu by raising various grounds.

2. The case of the petitioner is that he is the foster son of one Govindammal, wife of Rosaiah. The said Govindammal was working as a sweeper and gardener at Government Higher Secondary School (Boys) Pallipat. The petitioner was brought up by the said Govindammal and Rosaiah as their son from his childhood and the petitioner is the son of one Dhandugan, who is said Rosaiah's brother. The said Govindammal died on 27.10.2016 and her husband pre-deceased. After the death of the said Govindammal, the Tahsildar, Pallipat issued legal heir certificate to the petitioner as foster son after the enquiry in order to obtain all the benefits and job under the compassionate ground.

3. Further, the petitioner submits that he approached the District Educational Officer, Tiruvallur, to get benefits and the job under compassionate ground and produced relevant records with legal heir certificate of the above said deceased Govindammal and the said officer had sanctioned all the benefits to the petitioner, however, for the job under compassionate ground, the said officer orally requested to furnish the order of succession certificate from the court instead of legal heir certificate.

4. Hence the petitioner has filed a petition before the District Munsif Cum Judicial Magistrate, Pallipattu for issuance of succession certificate under Section 372 of Indian Succession Certificate. Thereafter, the said petition was returned seeking maintainability by the court below and upon perusal of the Judgment of this Court, the learned District Munsif Cum Judicial Magistrate, Pallipattu had not entertained the said petition, however, since the petitioner has not produced the details of debts and securities, which is mandatory for issuance of succession certificate, as per Section 372(1)(f) of the Indian Succession Act and due to quoting of wrong provisions of Law, the court below had rejected the petition. Further, the court below observed that "the petitioner had not produced any authorities so as to establish that this Court has jurisdiction to grant succession certificate in order to secure appointment on compassionate grounds". Challenging the said order, the petitioner is before this Court.

5. The learned counsel for the petitioner submits that the petitioner had approached the District Educational Officer, Thiruvallur to get the benefits of the deceased Govindammal and it was also granted to him. Also, the petitioner has filed an application seeking succession certificate to get job under compassionate grounds, which was unnumbered. Subsequently, the same was returned for certain clarifications on the ground of jurisdiction issue and it was represented before the trial court, but the said petition was rejected without considering the judgments submitted by the him.

6. It is represented on behalf of the petitioner that the court below is having ample jurisdiction to deal with the petition and the trial court ought to have numbered the same and proceeded further with the case rather than rejecting the same. Therefore, the rejection order passed in unnumbered SCOP dated 29.01.2021 is illegal and liable to be set aside, he pleaded.

7. The learned counsel for the petitioner in support of his contention relied on the Judgment of this Court reported in CDJ 1971 MHC 316 [Vellaiammal Vs. Vellaichamy] and prayed that the District Munsif has got jurisdiction to issue the certificate. He also relied on the Judgment of High Court of Karnataka reported in CDJ 1977 Kar HC 084 [Ananthamathi Vs. Ratnavathi] wherein the relevant paragraphs are mentioned hereunder :-

"The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this part."

The Act thus confers jurisdiction on the District Judge in the Matter of succession certificate. Section 388 of the Act provides power on the State Government to issue notification in the official gazette investing any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge. This section corresponds to S. 26 of the Succession Certificate Act 7 of 1889. It is undisputed that the State of Karnataka has not issued any notification under S. 388, investing the Munsiff's Court with power to exercise the functions of a District Judge. But similar notifications were issued by the erstwhile State of Madras under S. 26 of the Succession Certificate Act, 1889. The said Act has been repealed and re-enacted as Part X of the Succession Act, 1925. Those notifications are not easily traceable; but, fortunately found chronologically collated by Viswanatha Sastri, J., in N, Chinnakannu Pillai v. N. S. Sundaram, . I would helpfully quote the passage at page 438:

"Under S. 26(1), Succession Certificate Act, 1889, the Local Government by G. O. No. 391 dated 22-10-1921 notified that the Subordinate Judge of Tuticorin would have jurisdiction to issue succession certificates. In a later G. O No. 1731 dated 5-6-1924, the Local Government invested all Subordinate judges and District Munsiffs except those at the head quarters of districts (subject to a few exceptions) with the powers of a District Court under the Succession Certificate Act, 1889, within the local limits of their respective jurisdiction. By another notification, G. O. No. 24 dated 7-1-1925 superseding G. O. No. 1731 (wrongly printed as G. O. No. 371 at p. 274 of Vol. I of the Civil Rules of Practice) the Local Government invested all Courts of District Munsiffs in the Presidency except those situated at headquarters of districts, with jurisdiction to issue succession certificates. All these notifications were issued under S. 26, Succession Certificate Act, 1889, which has now been repealed and re-enacted as Part X of the Succession Act, 1925."

8. Heard the learned counsel for the petitioner and perused the judgments as well as the documents placed on record.

9. It is the case of the petitioner that the petitioner is the foster son of Govindammal, who was working as a sweeper and gardener at Government Higher Secondary School (Boys) Pallipet and died on 27.10.2016. The Tahsildar, Pallipattu had issued legal heirship certificate by mentioning the petitioner as 'foster son' of the said Govindammal and on account of the same, the benefits of Govindammal, was also granted to the petitioner and it is pertinent to note that in order to procure a Succession Certificate, he / she needs to satisfy the following requirements:

"1) The legal heir needs to approach the competent court and file a petition for procuring the succession certificate.

2) The District Judge within whose jurisdiction the deceased person generally resided during the time of his death, or, if at that time there was no particular place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased person may be found, may grant the succession certificate accordingly.

3) The petition should contain all the important details such as the name of the petitioner, relationship with the deceased person, the names of all the heirs of the deceased, time, date and place of death.

4) Along with the petition, death certificate and any other important documents that the court may require should also be attached.

5) The court, after scrutinizing the petition, issues a notice to all concerned parties and also issues a notice in the newspaper and stipulates a time frame (usually one and a half months) within which anyone who has any kind of objections may raise them. If no one contests the notice and the court is contented, it passes an order to issue a succession certificate to the petitioner.

When the District Judge grants the succession certificate, he shall specify the shares, securities, and debts set forth in the application for the certificate, and may thereby authorize the person to whom the certificate is granted-

(i) To receive the interest or dividends on the securities (OR)

(ii) To transfer or negotiate the securities."

10. That apart, Section 372 of the Indian Succession Act, deals with the following:-

"(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:-

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
(c) the family or other near relatives of the deceased and their respective residences;
(d) the right in which the petitioner claims;
(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

3 [(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]”

11. It is to be noted that a succession certificate can be granted in favour of any person, if he satisfies the norms perscribed. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable to the deceased to his heirs and legal representatives. He / she does not derive any right thereunder. The succession certificate merely enabled he / she to collect the dues of the deceased. No status was conferred on he / she thereby. It did not prove any relationship between the deceased and the applicant. Further, it is also observed that the adoption was purported to have been recorded on a stamp paper, as per decision of Hon'ble Supreme Court in Civil Appeal No. 3242 of 2009 [Arising out of SLP (Civil) No.6230 of 2007] [State Of Chhatisgarh & Ors Vs. Dhirjo Kumar Sengar]. It is not in dispute regarding the jurisdiction of the Court, which rendered the order of rejection.

12. Since the case pertains to issuance of succession certificate, it is relevant to mention the significance of legal heir certificate and succession certificate and the documents required for issuance of the said certificates:

Legal heir certificate is used for many purposes such as, PF claims, pension, insurance, appointment on compassionate grounds.

Succession certificate is issued to claim securities, debt payments/ collection of debts, transfer of property, or any other assets.

Legal heir certificate requires the following documents:

- Original death certificate
- Identity Card
- Ration Card
- Name of the legal heirs and relationship with the deceased
- An affidavit worth Rs.20 on a stamp paper and a stamp worth Rs.2

Whereas for the issuance of Succession Certificate, the documents required are as follows:

- Original death certificate
- Details of death (place/time and date)
- Names of all the family members and their relationship with the deceased person.

13. As far as the present case on hand, it is clear that for issuance of appointment on compassionate ground, legal heir certificate is sufficient, however, the petitioner seeks for issuance of succession certificate for appointment on compassionate ground and the petitioner has not enclosed the proceedings in which he was required to furnish the succession certificate for appointment, merely he had stated that the authority had requested him orally to produce the succession certificate in order to secure compassionate appointment.

14. Be that as it may, on going through the documents on record and on perusal of the order of the trial court, this Court is of the view that the petitioner has not mentioned the relevant provisions, as per Indian Succession Act and the necessary documents before the court below to enable the court to decide the matter and hence the court below is right in rejecting the prayer of the petitioner. The court below has rightly dismissed it on the ground that even though it has jurisdiction to issue the certificate, the petitioner has not produced any details to convince as to why the certificate has to be issued to him. Hence in view of the facts and circumstances of the case, this Court is inclined to dismiss the present Civil Revision Petition. No costs.

s/d-

Assistant Registrar

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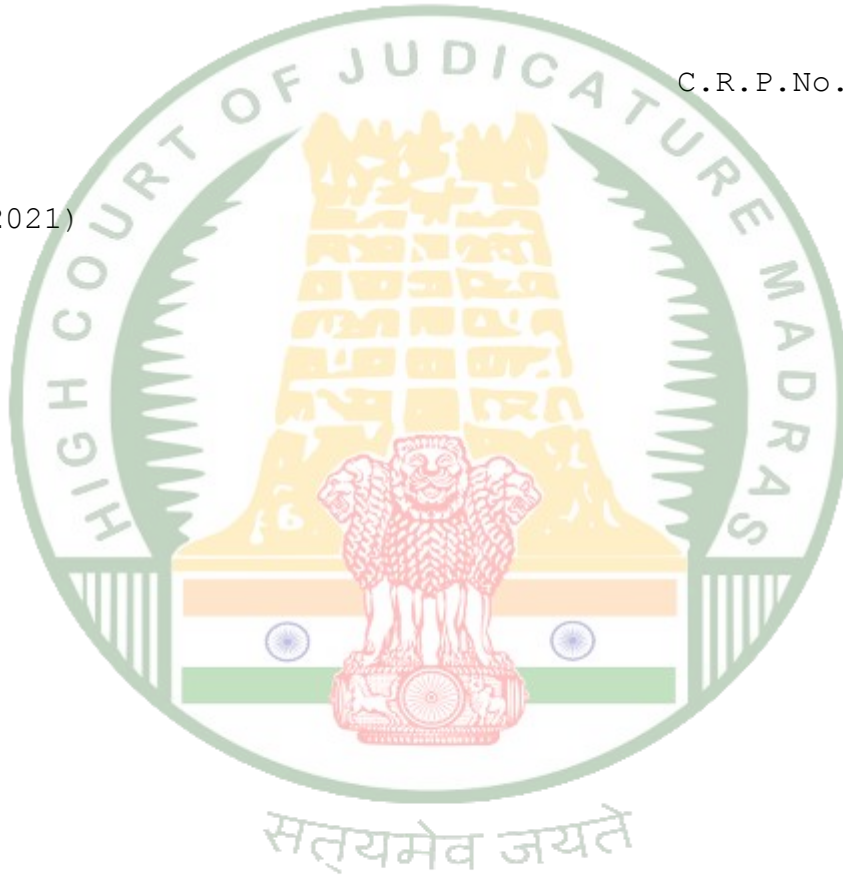
Sub-Assistant Registrar

ssd
To

1. The District Munsif cum Judicial Magistrate,
Pallipattu.
2. The Section Officer,
V.R.Section,
High Court, Madras

C.R.P.No.378 of 2021

AKII(CO)
SP(15/04/2021)



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