

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2021

C O R A M

THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

W.P.No.5065 of 2021
and W.M.P.No.5641 of 2021

R.Sudheer Babu

... Petitioner

Vs.

The Tahsildar,
Avadi Taluk,
Avadi,
Tiruvallur District

...Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the petitioner's online lgal heir application dated 13.01.2021 in Application No.TN-7202101131509 which was rejected by the respondent through his online transaction reference No.TNCIT00002622383 and quash the same and direct the respondent to issue legal heirship certificate to the petitioner.

For Petitioner : Mr.K.Kannan

For Respondents : Mr.V.Shanmugasundar
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 13.01.2021 passed by the respondent, rejecting the petitioner's application seeking for issuance of a legal heirship certificate for the deceased adoptive father Ramaiah, who died on 12.11.2019.

2. Mr.K.Kannan, learned counsel for the petitioner and Mr.V.Shanmugasundar, learned Special Government Pleader accepts notice on behalf of the respondent. By consent of both the parties, this writ petition is taken up for final disposal at the time of admission itself.

3. It is the case of the petitioner that he was born to O.Ebinesaer and Sujathamma on 28.02.1988. According to him, Ramaiah is his father's relative. Since Ramaiah and his wife Layamma, out of their wedlock, did not have any issues, he

was given on adoption by his biological parents to Ramaiah and Layammal under a Deed of Adoption dated 19.05.2014, registered as Document No.56 of 2014, Sub Registrar Office, Avadi. Even since the deed of adoption (i.e) on 19.05.2014, he is the adopted son of Ramaiah and Layammal. Layammal is the adoptive mother, who pre-deceased her husband Ramaiah on 11.02.2009. Ramaiah also died thereafter on 12.11.2019. According to the petitioner, he is the only surviving legal heir for the deceased Ramaiah. He applied for legal heirship certificate for the deceased Ramaiah. However, under the impugned order dated 13.01.2021, the respondent has rejected the petitioner's application on the ground that the petitioner is not the own son of the deceased, but is an adopted son. Aggrieved by the same, this Writ Petition has been filed.

4. Heard Mr.K.Kannan, learned counsel for the petitioner and Mr.V.Shanmugasundar, learned Special Government Pleader appearing on behalf of the respondent.

5. The learned counsel for the petitioner drew the attention of this Court to an order passed by another single Judge of this Court on 06.02.2018 in W.P.No.27592 of 2017 in the case of M.G.Mamtha and another -vs- The Tahsildar, Krishnagiri District and would submit that it is settled law that there is no bar for the respondent to issue legal heirship certificate disclosing the adopted son as also one of the legal heirs whenever there has been a legal adoption. In particular, he would also submit that the learned Single Judge, in the aforesaid decision, has followed the decision of the Hon'ble Supreme Court in the case of Dharma Shamrao Agalawe -vs- Pandurang Miragu Agalawe reported in 1998 (2) SCC 126, where, the Hon'ble Supreme Court has held that the adopted son became a member of the Co-parcenary entitled to claim share in the property. The relevant paragraphs of the order of the single Judge passed in W.P.No.27592 of 2017 referred to supra are as follows:-

"11. In fact, the Apex Court relied on the earlier decisions made and reported in 1998(2) SCC 126, (Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe) and 1987 (1) SCC 160, (Vasant V. Dattu), to hold that the adopted son therein became a member of the Co-parcenary, entitled to claim share in the property.

12. Perusal of the above said provision of law as well as the decision of the Apex Court, as discussed supra would show without any ambiguity that an adopted child, from the date of the legal adoption, becomes the child of adoptive father or mother for all purposes since such child severed his or her ties in the family of his or her birth from the said day onwards. Consequently, all the ties of the child are replaced in the adoptive family

created by adoption. Though such adopted child, in the adoptive family, is not the child by biological creation, however, it should be born in mind that such adopted child is the child of the adoptive family by legal creation, which status certainly confers on such child all such rights as a biological child in the adoptive family. Once such right is conferred under law, the said child is to be considered, treated, looked into, given the status as the child of the adoptive family, as the prefix "adopted" is bound to vanish or at least lose its significance any more for any purpose from the day of adoption. Hence, the respondent is not empowered to deny the same and refuse to issue the Legal Heirship Certificate to the second petitioner, as she is to be treated as the child of the deceased Chandrasekar for all purposes and consequently, she becomes the Class I heir of the deceased and thus, entitled to get her name also included in the Legal Heirship Certificate."

6. In the case on hand, the petitioner claims that he has been legally adopted by the deceased Ramaiah. He has produced before this Court a registered Adoption Deed dated 19.05.2014 registered as Document No.56 of 2014, Sub Registrar Office, Avadi, by which, he became the adopted son of Ramaiah, ever since 19.05.2014.

7. As seen from the impugned order, there is no reference to the Adoption Deed dated 19.05.2014, by which, the petitioner claims to have been legally adopted by the deceased Ramaiah. The impugned order also has not considered the order dated 06.02.2018 passed in W.P.No.27592 of 2017 referred to by the learned counsel for the petitioner. Therefore, this Court is of the considered view that by total non-application of mind to the judicial precedents available in the issue on hand and without giving due consideration to the Deed of Adoption dated 19.05.2014, by which, the petitioner claims to have been legally adopted, the impugned order has been passed. Hence, the impugned order will have to be necessarily quashed and the matter remanded back to the respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner and other necessary parties, if any.

8. In the result, the impugned dated 13.01.2021 is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders on merits and in accordance with law on the petitioner's application seeking for issuance of legal heirship certificate for the deceased adoptive father Ramaiah, who died on 12.11.2019, after giving due consideration to the

Deed of Adoption dated 19.05.2014 registered as Document No.56 of 2014 and the decision held on 06.02.2018 relied upon by the learned counsel for the petitioner before this Court in W.P.No.27592 of 2017, within a period of 12 weeks from the date of receipt of a copy of this order.

9. With the aforesaid directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

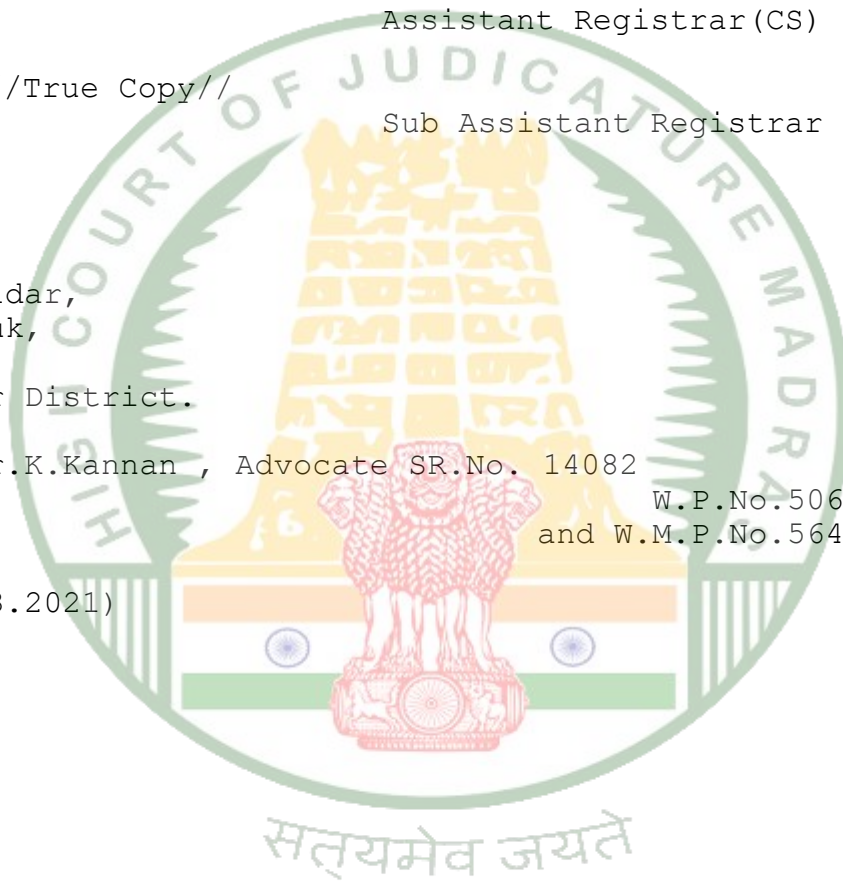
srn
To

The Tahsildar,
Avadi Taluk,
Avadi,
Tiruvallur District.

+lcc to Mr.K.Kannan , Advocate SR.No. 14082

W.P.No.5065 of 2021
and W.M.P.No.5641 of 2021

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A.SK(30.03.2021)



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