



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

W.P.No. 11266 of 2018

1. Smt. Mary Brigit (Deceased)
2. A.Philomena Margret
3. A.Salet Mary Anita (Deceased)
4. H.Clara Josephine
5. T.Nancy Priya
6. T.Daisy Rani
7. A.Albert
8. A.Wilson Prince
9. A.Robert Pinto
(Petitioners 2 to 9 impleaded
vide orders dated 25.11.2021
in W.M.P. Nos. 16579 of 2019 and 3222 of 2021)

..Petitioners

vs

1. The Nazar,
Office of the District Judge,
The Nilgiris District.
2. The Treasury Officer,
District Collectorate,
The Nilgiris District.
3. M/s. King and Patridge,
Catholic Centre, 2nd Floor,
108, Armenian Street,
Chennai - 600 001.



4. The Registrar-General,
Hon'ble High Court,
Madras - 600 104.

(R4 impleaded vide order dated 15.07.2013
in W.M.P. No. 20223 of 2019)

5. The Chief Administrative Officer,
Officer of the District Judge,
The Nilgiris District.
(R5 suo motu impleaded)

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 and 2 to furnish the probate copy granted in O.P. No. 15 of 1972 dated 29.07.1972 on the file of the 1st respondent herein.

For the Petitioners	: Mr. V.Manohar
For the Respondents 1, 4 & 5	: Mr. R.Sunilkumar
For the Respondent 2	: Mr. C.Harsha Raj, Additional Government Pleader
For the Respondent 3	: Ms. Bensi Rema for M/s. King & Patridge

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

The writ petition has been filed to seek a direction to the respondents 1 and 2 to furnish the probate copy granted in O.P.No. 15 of 1972 on 29.07.1972 on the file of the respondent 1 herein.

2. Learned counsel for the petitioners submits that pursuant to the will, an application for grant of probate was filed and registered as O.P. No. 15 of 1972 in the District Court at Udahagmandalam and an order on it was passed on 29.07.1972. The deceased petitioner 1 made an application to obtain the copy of the will. It was not furnished and, accordingly, the writ petition has been preferred. The copy of the original will cannot be destroyed, rather it should be kept by the Court to which it was committed to seek the probate. If the copy of the will was transferred to the High Court for its custody, then the High Court should have provided copy of the will to the deceased petitioner 1 on her application, but neither the District Judge nor the High Court is providing the copy of the will and,



accordingly, the present writ petition was filed to seek a direction on the respondents 1 and 2 to furnish a copy of the will which was submitted in O.P.No. 15 of 1972.

3. Counter affidavits to the writ petition have been filed by the respondents 1, 3 and 5. In the counter affidavit filed by the respondent 1 and 5, it is stated that O.P.No. 15 of 1972 was filed in the erstwhile Sub Court, Udhagamandalam on 07.07.1972 under Sections 222(i) and 272 of the Indian Succession Act, 1925, for issuance of probate in respect of the will dated 19.07.1969. An order was passed on 29.07.1972. The records pertaining to O.P.No. 15 of 1972 were then destroyed after complying with the provisions of the Destruction of Records Act, 1917. Before destruction of the records of O.P.No. 15 of 1972, apart from other records, it was notified in the gazette in August 1998 and it is after complying with the provisions that the records were destroyed. In view of the above, the records of O.P.No. 15 of 1972 are not available and since the documents pertaining to O.P.No. 15 of 1972 have been destroyed, the copy of the will cannot be given.

4. A counter affidavit has been filed by the respondent 3 as well, where the facts given by the respondent 1 have been reiterated. The records of O.P.No. 15 of 1972 were destroyed after publication in gazette in August 1998. The records pertaining to O.P.No. 15 of 1972 were not transferred to the High Court as stated by counsel appearing for the High Court based on the information submitted by the respondent 3. The Registry of the High Court has put a note that records of O.P. No. 15 of 1972 were not transferred to the High Court. In view of the facts given above, the records of O.P. No. 15 of 1972 are not available in the High Court. In the instant case, there was no transfer of records from the District Court and the records have been destroyed after complying with the provisions i.e. after due publication of the details of the records in the gazette publication in August 1998. The facts given above show that the records are not available so as to provide a copy of the will to the petitioners.

5. At this stage, learned counsel for the petitioners submits that reasoned records could not have been destroyed by the respondents. Reasoned records includes the will, which is required to be protected. The provisions complied by the respondents could have been for the records other than the original documents. Learned counsel for the petitioners made a reference to the rule, but the rule for maintaining the original records has not been shown to the Court. In any case, even if the rule exists, the fact remains that records pertaining to O.P.No. 15 of 1972 were destroyed after complying with the provisions and, thus, it is not available. In the absence of the



will in the records, a direction cannot be given to furnish a copy of the will to the petitioners. In view of the fact situation available on record, the direction sought by the petitioners cannot be given. We are not going into the issue as to whether the petitioners have any lis pertaining to the properties referred to in the will, because the will itself is not available with the petitioners. We are not addressing the aforesaid issue, otherwise the petitioners would have been called upon to show their lis.

6. The direction of the nature sought herein cannot be issued and, accordingly, the writ petition is dismissed for the reasons given above.

There will be no order as to costs. W.M.P.Nos.13167, 13639 and 20431 of 2018 are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vjt

To:

1. The Nazar,
Office of the District Judge,
The Nilgiris District.
2. The Treasury Officer,
District Collectorate,
The Nilgiris District.
3. The Registrar-General,
Hon'ble High Court,
Madras - 600 104.
4. The Chief Administrative Officer,
Officer of the District Judge,
The Nilgiris District.

+1cc to M/s.King and Partridge, Advocate, S.R.No.61226

+1cc to Mr.V.Manohar, Advocate, S.R.No.61323

+1cc to the Government Pleader, S.R.No.62002

W.P.No. 11266 of 2018

SR(CO)
RGA(08/12/2021)