



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 14746 of 2021

J. Nargis

.. Petitioner

Versus

1. The Revenue Divisional Officer
Kallakurichi Taluk
Kallakuruchi District, Tamil Nadu

2. The Tahsildar
Kallakurichi Taluk
Kallakuruchi District, Tamil Nadu

3. Kairoon Bi

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 22.04.2021 passed by the second respondent in proceedings No.Na.Ka.A4/970/2020 and to quash the same and consequently to direct the second respondent to issue legal heirship certificate to the petitioner.

For Petitioner : Mr. Haja Mohideen Gisthi

For Respondents: Mr. Stalin Abhimanyu
Government Counsel for R1-R2

ORDER

This writ petition is filed to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 22.04.2021 passed by the second respondent, to quash the same and consequently to direct the second respondent to issue legal heirship certificate to the petitioner.

2. According to the petitioner, she was adopted by one Kairoon Bi, the third respondent herein and her husband late. Abdul Jabbar by way of a registered Deed of Adoption registered as Doc. No. 76 of 1991 on the file of Registrar, Cuddalore. At the time of such adoption, the petitioner was one year old. Thereafter, on 21.09.1992, her adopted father died and the petitioner was living with her adopted mother, the third respondent herein, till her marriage. with one Sheik Mohamed Sathik on 25.05.1995. Further, the third respondent, who is her adopted mother, had executed a settlement deed on 19.07.2004 registered as Doc. No. 1172 of 2004 on the file of SRO,



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Thyagadurgam, by which certain properties were settled in favour of the petitioner. While so, during 2011, when the ancestral properties of the petitioner's adopted mother were sought to be partitioned, the third respondent strangely acted against the welfare of the petitioner to deny any property to be settled in favour of the petitioner. At this stage, the petitioner submitted an application for issuing legal heir certificate of her adopted father, but it was rejected on 29.01.2013 purportedly on the basis of the objections raised by the third respondent herein. Subsequently, the petitioner came to know about the order dated 29.01.2013 passed in the year 2020 and therefore, she filed WP No. 2630 of 2020 before this Court. This Court, by order dated 09.02.2021, finding that the order of rejection was passed without affording opportunity to the petitioner, set aside the said order with a direction to the second respondent herein to conduct an enquiry afresh and pass orders on merits. However, the second respondent, without considering the adoption deed dated 20.05.1991 as well as other documentary evidence produced by the petitioner, passed an order dated 22.04.2021 rejecting the claim of the petitioner seeking legal heir certificate. Aggrieved by the same, the petitioner has come up with this writ petition for the aforesaid relief.

3. The learned counsel appearing for the petitioner contended that without considering the deed of adoption executed by the petitioner's adopted and biological parents and providing an opportunity of hearing to the petitioner, the second respondent passed the impugned order of rejection, which is arbitrary, illegal and in violation of the principles of natural justice. The learned counsel further contended that the biological parents were not called for before passing the order of rejection. Hence, the learned counsel prayed for setting aside the order of rejection and allowing this writ petition.

4. The learned Government Counsel appearing for the respondents 1 and 2 submitted that the Adoption Deed bearing document No. 76/1991 was not signed by the biological parents of the petitioner herein and the adopted mother namely the third respondent and the same was signed only by the adopted father, who was not in full conscious at the time of signing the deed of adoption. The learned counsel further submitted that on the basis of the letter dated 20.05.2020 issued by the District Registrar (Administration) in Lr.No. Na.Ka. 4850/B1/2019, the adoption deed can only be treated as affidavit and owing to the discrepancies found in the adoption deed, the validity of it can only be decided by the competent court of law. The learned Government Counsel therefore prayed for dismissal of this writ petition.

5. Heard the learned counsel appearing for both sides and perused the materials placed on record. Earlier, the petitioner filed a writ petition in W.P.No.2630 of 2020 to quash the order dated 29.01.2013 passed by the second respondent, rejecting the petitioner's application seeking legal heir certificate and this court disposed of the said writ



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petition, by order dated 09.02.2021, the relevant passage of which, is usefully extracted below:

"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 principle of natural justice while passing the order 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 of the merits of the case".

In compliance of the aforesaid order, the second respondent has passed the order dated 22.04.2021, which is impugned in this writ petition, rejecting the claim of the petitioner, stating that the biological parents of the petitioner as well as the third respondent did not sign the adoption deed. Such being the reason for rejection, this court is of the view that the second respondent ought to have examined the biological parents of the petitioner, but they were not called for adducing the evidence. Therefore, on this ground alone, the order impugned herein is liable to be set aside and accordingly, set aside. However, it is made clear that this Court is not expressing any opinion on the merits of the case, but directs the second respondent to consider the petitioner's claim for issuance of legal heirship certificate afresh, and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of hearing to the petitioner, her biological parents, third respondent and any other interested parties, within a period of six weeks from the date of receipt of a copy of this order.

6. Accordingly, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar



To

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

2. The Tahsildar
Kallakurichi Taluk,
Kallakurichi District.

+1cc to the Government Pleader, S.R.No.55049

WP No. 14746 of 2021

AJS (CO)
SB(26/11/2021)