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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WRIT PETITION NO.16801 OF 2020

AND

W.M.P.NO.20816 OF 2020

Mumtaj

.. Petitioner

Versus

1. The Tahsildar
Tindivanam Taluk
Villupuram District

2. Ameer Begum
3. Zakir Hussain
4. Sowkathali

(RR2 to 4 were impleaded as per order dated
24.08.2021 made in WMP.No.24752 of 2020
in WP.No.16801 of 2020)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the entire records which culminated in passing the order of rejection dated 05.09.2020 passed by the first respondent, rejecting the Application No.TN-720200905321 submitted by the petitioner herein, quash the same and consequently direct the first respondent to issue a legal heir certificate certifying that the petitioner and the six children born to Late John Basha are the surviving legal heirs of late John Basha.

For Petitioner : M/s.R.Hemalatha
for Mr.S.Madhar Khan

For Respondents : Mr.Stalin Abimanyu,
Government Counsel for R1
Mr.N.Desinghu for R2 to 4



O R D E R

This Writ Petition has been filed to quash the order of rejection dated 05.09.2020 passed by the 1st respondent, the Tahsildar, Tindivanam Taluk, Villupuram District, rejecting the Application No.TN-720200905321 submitted by the petitioner for issuance of legal heirship Certificate and for a consequential direction to the 1st respondent to issue a legal heir certificate certifying that the petitioner and the six children born to the deceased John Basha are his surviving legal heirs.

2. It is the case of the petitioner that she is the second wife of the deceased John Basha. The first wife of the said John Basha is Hajeera and out of the said wedlock between John Basha and Hajeera, three children were born. According to the petitioner, Hajeera, the first wife, was terminally ill and therefore, with her consent, John Basha married the petitioner as his second wife purportedly to take care of the three children born, out of the first wedlock. It is also stated that Hajeera, first wife of the deceased John Basha died on 20.12.1997, within 10 months of the second marriage with the petitioner. The petitioner further averred that as per Mohammedan law, there is no restriction for contracting more than one marriage. Further, the said John Basha married the petitioner as his second wife with the consent of his first wife Hajeera, as she was sick. Out of the second wedlock between the petitioner and John Basha, three more children were born. On 27.07.2020, the said John Basha died at the age of 56 years, leaving behind the petitioner and the six children as mentioned above as his legal heirs. In this circumstance, the petitioner submitted an application vide TN 720200905321 for issuance of legal heirship certificate but it was rejected by the first respondent on the ground that the deceased John Basha had contracted two marriages and therefore, directed her to approach the competent Civil Court seeking appropriate relief.

3. The learned counsel for the petitioner would contend that the petitioner has submitted an application stating all the facts with regard to the two marriages and the children born out of such marriage with relevant documents. It is also submitted that pending the writ petition, the respondents 2 to 4 were impleaded and they have also filed an affidavit stating that they are the children born to the deceased John Basha and the first wife Hajeera and the petitioner, being the second wife, is adequately taking care of all the children's interest, nurtures them well and supports them in all forms and manifestations. The learned counsel would also contend that as per Mohammedan Law, contracting more than one marriage is not prohibited. Further, no one has raised any opposition as regards the status



of the petitioner as second wife of the deceased John Basha. Even the children born out of the first wedlock between the deceased John Basha and his first wife have filed an affidavit by stating that the petitioner is taking care of them as their mother. Therefore, according to the learned counsel, the first respondent, without conducting any enquiry or affording an opportunity of hearing to the petitioner, has simply passed the order dated 05.09.2020 rejecting the application of the petitioner seeking legal heir certificate, which is arbitrary, illegal and in violation of the principles of natural justice and is liable to be set aside.

4. On the above contentions, this Court heard the learned Government Counsel appearing for the first respondent as well as the learned counsel for the respondents 2 to 4 and perused the materials placed.

5. It is seen that the petitioner is the second wife of the deceased John Basha. The deceased John Basha earlier married one Hajeera and out of such wedlock, three children namely (i) Ameera Begum (ii) Zakir Hussain and (iii) Sowkath Ali were born. When the first wife was alive, with her consent, John Basha married the petitioner as his second wife during January 1997. After such marriage, within a period of eleven months, the first wife Hajeera died on 20.12.1997 which is evident from the death certificate. Thereafter, out of the wedlock between John Basha and the petitioner, the respondents 2 to 4 herein have born and they have filed an affidavit stating that the petitioner herein adequately takes care of them and they have no objection for issuing legal heir certificate as prayed for by the petitioner. In any event, there is no objection raised by any one for issuing the legal heir certificate to the petitioner. The respondent without conducting any enquiry or affording an opportunity of hearing to the petitioner, has passed the impugned order stating that the deceased John Basha contracted two marriages and therefore, the petitioner has to approach the Civil Court.

6. It is well settled that the Tahsildar of a Taluk is not restrained from issuing a legal heir certificate merely on the ground that the deceased had contracted two marriages. Before passing such an order, the Tahsildar has to satisfy himself as to the genuineness of the claim of the applicant who seeks for issuing a legal heir certificate. For arriving at such satisfaction, he has to conduct an enquiry and to go through the documentary evidence filed in support thereof. In case, there is any dispute raised by any one with regard to the status of the applicant or the persons who are to be declared as legal heirs, then, the Tahsildar can direct the applicant to approach the Civil Court for relief. In the present case, the first



respondent merely stated that since the deceased John Basha contracted two marriages, the petitioner has to only approach the civil court to get a legal heir certificate. Such an order passed by the first respondent is legally not sustainable.

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7. In view of the above, the impugned order dated 05.09.2020 passed by the first respondent is set aside and the matter is remitted to the first respondent for fresh consideration by taking into account the affidavit filed by the respondents 2 to 4. The first respondent is directed to reconsider the application submitted by the petitioner for the issuance of the legal heirship certificate and pass appropriate orders in accordance with law, after affording an opportunity of hearing to the petitioner as well as the respondents 2 to 4, within a period of six weeks from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vum/rsh

To

The Tahsildar,
Tindivanam Taluk, Villupuram District.

+2cc to Mr.S.Madhar Khan, Advocate, S.R.No.44693
+1cc to the Government Pleader, S.R.No.45224

WP.No.16801 of 2020

NR(CO)
CS/20/10/2021