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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No. 26829 of 2021

1.B.Mukesh

2.Aadhya Mukesh (Minor)
Represented by her Father
B.Mukesh

... Petitioners

Vs.

1. The Tahsildar
Sholinganallur Taluk
No.1, I Cross Street
New Kumaran Nagar
Sholinganallur
Chennai - 600 119.

2. Aarohan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent culminating into the rejection of the petitioners application dated 24.03.2021 for issuance of legal heir certificate for deceased Smitha's legal heir under impugned order dated 18.08.2021 in proceedings TN No.720 210 324 1543 and to quash the same and consequently, direct the first respondent to issue legal heir certificate including the petitioners and the second respondent within a time frame fixed by this Court.

For Petitioner : M/s. Vijayalakshmi K. Rajaratnam

For RR1 : Mr.K.Karthikeyan
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent culminating into the rejection of the petitioners application dated 24.03.2021 for issuance of legal heir certificate for deceased Smitha's legal heir under impugned order dated 18.08.2021 in proceedings TN



No.720 210 324 1543 and to quash the same and consequently, direct the first respondent to issue legal heir certificate including the petitioners and the second respondent within a time frame fixed by this Court.

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2. The case of the petitioners is that the 1st petitioner claims to be the husband of the deceased namely Srimitha and he has been in a living relationship from 2012 and out of the said relationship, the 2nd petitioner daughter was born on 04.04.2012 and further the late Sri Smitha has a son namely Aarohan, the 2nd respondent through her first husband. While so, late Sri Smitha died on 02.03.2021, leaving behind the petitioner's daughter, her son through her first husband, the 2nd respondent and the petitioner and therefore, the petitioner applied for the legal heir certificate of deceased Sri Smitha before the 1st respondent on 24.03.2021. However, the 1st respondent without conducting a property enquiry, was pleaded to forward a message to the petitioner's mobile number that his application for legal heir certificate has been summarily rejected for the reason that he is not a legal husband of a deceased and the 2nd petitioner is not a child born by wedlock between deceased and the petitioner and the 2nd respondent is only the legal heir. Aggrieved by the said rejection order, the present petition has been filed.

3. The learned counsel appearing for the petitioners submitted that in order to prove the legal heirship of the petitioners, the petitioner has possessed the birth certificate, Aadhar Card, Passport of his daughter Aadhya / 2nd petitioner, which shows that the petitioner as her father and Sri Smitha as her mother. However there is no available material to establish the marriage solemnized between the petitioner and the deceased Sri Smitha. Though the 1st petitioner has valid documents to show that the 1st petitioner and the late Sri Smitha was the parents of the 2nd petitioner, the 1st respondent without conducting proper enquiry has rejected the petitioner's application for legal heir certificate and hence prays for appropriate orders.

4. The learned Government Advocate appearing for the 1st respondent submitted that though very many grounds have been raised, the issue raised in the present petition is civil in nature and it has be decided before the competent Civil Court and hence prays for dismissal of this petition.

5. This Court has carefully considered the rival submission and also perused the materials placed before it

6. As rightly pointed out by the learned Government Advocate, the issue involves disputed question of facts and it has to be decided only before the competent Civil Court. However the petitioner without approaching the appropriate Court,



straight away filing the present petition, is not sustainable and further this Court cannot adjudicate the matter under Article 226 of the Constitution of India.

7. In view of the above, this Writ Petition is dismissed and a liberty is granted to the petitioners to work out their remedy in accordance with law before the competent Forum. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Tahsildar
Sholinganallur Taluk
No.1, I Cross Street
New Kumaran Nagar
Sholinganallur
Chennai - 600 119.

+1cc to the Government Pleader, S.R.No.67892

W.P. No. 26829 of 2021

GPL(CO)
SB(28/01/2022)