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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 1107 of 2017

Dr. N. Saravanan

.. Petitioner

Versus

1. The Tahsildar
Uthangarai Taluk
Krishnagiri District

2. The Revenue Inspector
Kallavi, Uthangarai
Krishnagiri District

3. Subramani

4. Muchaniammal

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the proceedings in O.Mu.4232/2016/A1 dated 29.08.2016 from the file of the 1st respondent herein, quash the same and further direct the 1st respondent herein to issue a legal heirship certificate on account of the death of the petitioner's Father R. Nagarajan (since deceased) by taking into consideration of the Judgement dated 27.02.1979 in L.P.A. No. 101 of 1975 on the file of this Hon'ble Court.

For Petitioner : Mr. D. Shivakumaran

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

Mr. K. Thiruvengadam for R3-R4



ORDER

The petitioner seeks for issuing a writ of Certiorari Mandamus to quash the proceedings in O.Mu. 4232/2016/A1 dated 29.08.2016 on the file of the 1st respondent herein and issue further direction directing the 1st respondent herein to issue a legal heirship certificate on account of the death of his father R. Nagarajan (since deceased) by taking into consideration of the Judgement dated 27.02.1979 in L.P.A. No. 101 of 1975 on the file of this Hon'ble Court.

2. According to the petitioner, his father married the fourth respondent herein on 14.09.1961, reluctantly, due to the pressure exerted by his parents especially when he was aged 16 years. After such marriage, the fourth respondent developed an illicit relationship with one Bala Dasari Naidu and lived with him in adultery till 1962. It is out of such adulterous relationship, the fourth respondent had given birth to the third respondent herein. After the birth of the third respondent, the petitioner's father filed O.P. No. 410 of 1964 before the Subordinate Judge, Salem for dissolution of his marriage with the third respondent, but the Petition was dismissed for default. Thereafter, the plaintiff's father filed O.P. No. 7 of 1969 for dissolution of marriage before the District Court, Dharmapuri @ Krishnagiri and the same was dismissed on 16.04.1970. The petitioner's father filed CMA No. 93 of 1971 before this Court and it was disposed of and the matter was remanded back to the file of District Judge, Dharmapuri for fresh consideration. After remand, witnesses were examined and OP No. 7 of 1969 was allowed on 27.09.1974 by giving a clear finding that the third respondent herein was born to the fourth respondent through an adulterous relationship. Aggrieved by the same, the fourth respondent filed CMA No. 659 of 1974 before this Court and it was allowed on 12.08.1975 reversing the decree of divorce. Challenging the same, the petitioner's father filed LPA No. 101 of 1975 and by judgment dated 27.02.1979, the Division Bench of this Court restored the decree dissolving the marriage solemnised between the petitioner's father and the fourth respondent.

3. While the facts are so as stated above, the petitioner herein filed OS No. 50 of 1997 on the file of District Munsif cum Judicial Magistrate, Uthangarai to declare that the third respondent is not his son and consequently to restrain the



third respondent herein from printing the name of the petitioner's father in the marriage invitation. The trial court dismissed the suit on 25.11.2004. Aggrieved by the same, the petitioner's father filed A.S. No. 2 of 2005 before the Principal Subordinate Judge, Krishnagiri and it was partly allowed by declaring that the third respondent is not the son of the petitioner's father, however, declined to grant a permanent injunction on the ground that the marriage of the third respondent was already over by then.

4. Thereafter, the petitioner's father along with the petitioner and his daughter filed O.S. No. 132 of 2014 for a declaration to declare that the plaintiffs are having title to the suit property and for a consequential permanent injunction and for damages. The third respondent also filed O.S. No. 125 of 2015 on the file of Subordinate Judge, Uthangarai for partition and separate possession of the suit properties. During the pendency of the aforesaid suits, the petitioner's father Nagarajan died on 19.07.2016. Therefore, the petitioner submitted an application seeking to issue legal heir certificate indicating the name of the petitioner's mother, petitioner and his sister as the legal heirs. However, on the basis of objections raised by the third and fourth respondents, the first respondent passed an order of rejection on 29.08.2016, rejecting the application submitted by the petitioner seeking legal heir certificate and directed him to approach the competent Civil Court inasmuch as his father had two wives and the respondents 3 and 4 have submitted their objections. Aggrieved by the order of rejection dated 29.08.2016, the present writ petition is filed.

5. Heard the learned counsel for the petitioner as well as the respondents and perused the materials placed. The issue involved in this case has been settled by virtue of the judgment passed by the Division Bench of this Court in L.P.A. No. 101 of 1975, wherein, the Division Bench of this Court, on 27.02.1979 allowed and upheld the decision made in O.P. No. 7 of 1969 and restored the decree of divorce granted by the learned District Judge, Dharmapuri at Krishnagiri. The operative portion of the Order passed by the Division of Bench in L.P.A. No. 101 of 1975 is as follows:

“... We are, therefore, of opinion that we are entitled to consider the evidence in its full depth and content and if, on our



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appreciation and assessment of the evidence, we are of the opinion that the findings of the learned single judge cannot be sustained, we are entitled to disagree with the findings and reverse the decision.

In this case, the appellant has amply proved that at the relevant time the child, given birth to by the respondent on 3.6.1971, was conceived, he had no access whatsoever to his wife and furthermore, the respondent had been leading an adulterous life with Boosiappa. As such he is entitled to a decree for dissolution of marriage. We, therefore, allow the appeal and restore the decree passed by the trial judge."

6. Notwithstanding the decree of divorce, the third respondent decided to print the name of the petitioner's father Nagarajan in his wedding invitation as his father. On coming to know about the same, the petitioner's father filed O.S. No. 50 of 1997 on the file of District Munsif cum Judicial Magistrate, Uthangarai and the same was dismissed against which A.S. No. 2 of 2005 was filed before the Principal Sub Court, Krishnagiri. Further, the third and fourth respondent had filed S.A. No. 1220 of 2010 before this Court which is still pending. In spite of the judgement passed by the Division Bench in L.P.A. No. 101 of 1975, the third and fourth respondents were constantly pinpricking the petitioner's father for a share in the properties. The petitioner's father therefore filed O.S. No. 132 of 2014 for declaration of title over the suit properties which is pending before Subordinate Court, Krishnagiri. Further, the third respondent also filed O.S. No. 125 of 2017 before the Subordinate Court, Uthangarai for partition. While so, the petitioner's father died on 19.07.2016, therefore, the petitioner sought for issuance of legal heirship certificate before the first respondent and the same was rejected on the ground that there were family disputes between the parties and directed them to approach competent civil court for relief.

7. The learned counsel for the petitioner vehemently contended that the even after the submission of the order passed by the Division Bench of this Court in L.P.A. No. 101 of 1975 before the first respondent herein, the first respondent without



considering the same had passed the impugned order. The learned counsel for the petitioner seeks appropriate direction to the first respondent to issue legal heirship certificate to the petitioner.

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8. In the impugned order dated 29.08.2016, the first respondent has not referred to the judgment passed by the Division Bench of this Court in LPA No. 101 of 1975, by which the matrimonial relationship between the petitioner's father and the fourth respondent was set to rest. In fact, as against the Judgment in LPA No. 101 of 1975, there is no further appeal filed and therefore, the decree of divorce granted by this Court in LPA No. 101 of 1975, dissolving the marriage solemnised between the petitioner's father and the fourth respondent, has reached a finality. The first respondent, without referring to the judgment passed in LPA No. 101 of 1975, has concluded that there are litigations pending between the parties and therefore, directed the petitioner to approach the competent Civil Court. The subsequent litigation pending between the parties have nothing to do with the status of the petitioner as legal heir of the deceased Nagarajan. Therefore, having regard to the above facts and circumstances of the case, this court is inclined to set aside the impugned order. Accordingly, the order dated 29.08.2016 passed by the first respondent is set aside. The matter is remanded back to the first respondent for fresh consideration. The first respondent is directed to consider the petitioner's application for issuance of legal heirship certificate by taking into consideration of the Judgment passed by the Division Bench of this court dated 27-02-1979 in L.P.A. No. 101 of 1975 and the Judgment passed in A.S. No. 2 of 2005, before the Principal Subordinate Judge, Krishnagiri, afford an opportunity of hearing to the petitioner, the respondents 4 and 5 and others concerned and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

9. Accordingly, this Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



dhk/rsh

To

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1. The Tahsildar
Uthangarai Taluk
Krishnagiri District

2. The Revenue Inspector
Kallavi, Uthangarai
Krishnagiri District

+1cc to M/s.D.Shivakumaran, Advocate, S.R.No.53829
+1cc to the Government Pleader, S.R.No.54655

WP No. 1107 of 2017

VSN-II(CO)
SB(10/11/2021)