



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2021

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD).No.18357 of 2021

and

W.M.P(MD).No.15171 of 2021

C.Esakkimuthu

... Petitioner

Vs.

The Thasildar,
Thovalai Taluk,
Boothapandi and Post,
Kanyakumari District.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.M1/2451/2021 dated 09.08.2021 passed by the respondent and quash the same and consequently direct the respondent to issue legal heir certificate of late Madaswamy on considering the legal heir application of the family members dated 27.07.2021.

For Petitioner

: Mr.Rajkumar Sen

For Respondent

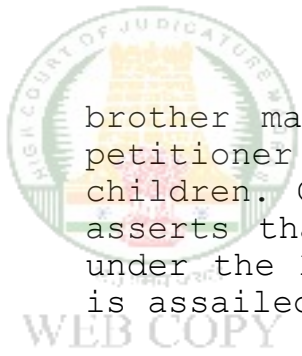
: Mr.P.Subbaraj

Counsel for State

ORDER

The petitioner assails an order dated 09.08.2021 by which his application for legal heirship certificate in respect of his deceased brother, Madaswamy, was rejected.

2.The petitioner states that his parents had two sons and three daughters. His father died on 12.09.1997. His mother predeceased his father. Consequently, on the date of death of the petitioner's father, the five siblings, including the petitioner, were the legal heirs. His younger brother, Madaswamy, is said to have suffered from a liver ailment for several years. The petitioner states that he died on 05.05.2021 and relies upon the death certificate issued on 17.07.2021 in this connection. According to the petitioner, his



brother married one Annakili, who passed away on 01.01.1993. The petitioner asserts that Madaswamy and Annakili did not have children. Consequently, upon the death of Madaswamy, the petitioner asserts that he and his sisters qualified as class II legal heirs under the Hindu Succession Act, 1956. Therefore, the impugned order is assailed.

3.Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of the sole respondent. He submits that the Thasildar may be directed to reconsider the matter in the light of earlier decisions of this Court on this subject.

4.The impugned order cites only one reason for rejecting the application. The reason cited therein is that the petitioner is not a direct heir of the deceased. The Hindu Succession Act, 1956, does not classify legal heirs into direct heirs and indirect heirs. As regards the legal heirs of a Hindu male who dies intestate, Section 8 thereof specifies the order in which the estate of such Hindu male would devolve. Section 8 specifies that the estate of a Hindu male would first devolve upon the heirs specified in class I of the Schedule. If there is no heir in class I, it would devolve upon the heirs specified in class II. If there are no heirs specified in class II, it would devolve upon the agnates of the deceased, and if there are no agnates upon the cognates of the deceased. The schedule specifies the class I legal heirs. It also specifies the class II legal heirs under nine entries. In terms of Section 9 thereof, the order of succession of the heirs in the nine entries under class II of the schedule would progress in sequence from the first entry to the second and so on until the ninth entry.

5.In earlier orders, this Court concluded that an application for a legal heir certificate should not be rejected merely on the ground that the applicant concerned is not a direct heir. Instead, the Thasildar should conduct an inquiry so as to identify the class II legal heirs. However, if upon conclusion of the inquiry, there is a dispute as to the persons who qualify as class II legal heirs, the parties may be relegated to the jurisdictional civil court.

6.As indicated above, the impugned order cites only one reason, namely, that the petitioner is not a direct heir. Consequently, the impugned order is unsustainable and is hereby quashed. As a corollary, the matter is remitted to the Thasildar for reconsideration. The petitioner is directed to once again forward copies of the relevant documents along with a copy of this order. Such re-submission shall be done within a period of two (2) weeks from the date of receipt of a copy of this order. Upon receipt thereof, the Thasildar is directed to conduct an inquiry by taking into account the observations in this order. The inquiry shall be conducted after providing a reasonable opportunity to all the legal heirs of the late Chinnakkan Nadar as per the legal heir certificate submitted. In addition, the Thasildar shall ascertain as to



whether Annakili died on 01.01.1993, as asserted by the petitioner, and whether the said Madaswamy and Annakili had children. Upon conclusion of such inquiry, a reasoned order shall be issued within a period of three (3) months from the date of receipt of the resubmitted documents from the petitioner.

7.W.P(MD).No.18357 of 2021 is disposed of on these terms without any order as to costs. Consequently, W.M.P(MD).No.15171 of 2021 is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sn/sji

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Thasildar,
Thovalai Taluk,
Boothapandi and Post,
Kanyakumari District.

+1 CC to M/s.SPL.GP (SR-32073[F] dated 21/10/2021)

**W.P (MD) .No.18357 of 2021
and**

**W.M.P (MD) .No.15171 of 2021
20.10.2021**

MGJ/JGB(01.11.2021) 3P 3C