



1/19

W.P.No.15003/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 13-10-2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.15003 of 2016

Dr.M.A.M.Ramaswamy Chettiar of
Chettinad Charitable Trust,
rep.by its Managing Trustee
Dr.A.C.Muthiah

...

Petitioner

-VS-

1.The Tahsildar,
Mylapore-Triplicane Taluk,
Mylapore,
Chennai- 600 028.

2.M.A.M.R.Muthiah

...

Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records relating to the order of the first respondent herein in B4/11118/2015, dated 10.03.2016, and quash the same.

For Petitioner : Mr.R.Srinivas,
for M/s.S.Sithirai Anandam.

For Respondent 1 : Mr.V.Arun,
Additional Advocate General,
assisted by Mr.T.Venkatesh Kumar,
Special Government Pleader.



WEB COPY



For Respondent 2 : Mr.M.S.Krishnan,
Senior Counsel,
for Mr.T.Balaji

ORDER

This Writ Petition has been filed challenging the impugned order of the first respondent in proceedings No.B4/11118/2015, dated 10.03.2016, issuing Legal Heirship Certificate to the second respondent.

2. The brief facts leading to the filing of this Writ Petition are that the leading industrialist Dr.M.A.M.Ramaswamy is said to have adopted the second respondent by an adoption deed, dated 09.02.1996. After the said adoption, the second respondent and Dr.M.A.M.Ramaswamy were residing together for several years. After some time, a dispute arose between the father and the son in the year 2014. The adoptive mother expired on 24.03.2006 and the adoptive father died on 02.12.2015. During his lifetime, it appears that, Dr.M.A.M.Ramaswamy executed a Will in favour of the petitioner in respect of certain properties. After the death of Dr.M.A.M.Ramaswamy, the second respondent applied to the first respondent for Legal Heirship Certificate on 09.12.2015. The first respondent, on receipt of the said application, called for objections and pursuant to the same, the writ petitioner and four others filed objections for grant of



Legal Heirship Certificate in favour of the second respondent. The objections mainly relate to questioning the very adoption itself. In the objections, they raised a point that the adoption was cancelled and, therefore, the Legal Heirship Certificate cannot be issued. After hearing both sides, the first respondent, took note of the fact that in the earlier Legal Heirship Certificate, which was issued after the death of the adoptive mother, the name of the second respondent was also shown as a legal heir along with the adoptive father. That apart, the Ration Card issued by the authority concerned also contained the name of the second respondent as a family member and Dr.M.A.M.Ramaswamy, as the head of the family. Considering the said aspects, the first respondent issued Legal Heirship Certificate to the second respondent. Challenging the said Legal Heirship Certificate, the entire proceedings are sought to be quashed in this Writ Petition.

3. Disputing the pleadings in the writ petition, the second respondent has filed a counter, questioning the locus of the petitioner to challenge the Legal Heirship Certificate. According to the second respondent, the petitioner is a stranger to the family and he has no right whatsoever to question the adoption or Legal Heirship Certificate. Accordingly, he sought for dismissal of the Writ Petition.



WEB COPY



4. Though the Writ Petition has been filed challenging the issuance of the Legal Heirship Certificate, the entire pleadings focussed on the validity of the adoption and the rights of the parties.

5. The contention of the petitioner is that the adoption of the second respondent in the year 1996 is not valid under law as per the Hindu Adoptions and Maintenance Act, 1956. It is the main contention of the petitioner that at the relevant point of time the second respondent was aged more than 15 years and, therefore, the adoption is void ab initio. Therefore, the question raised in this Writ Petition is mainly with regard to the validity of adoption. Though several pleadings have been made in the Writ Petition, this Court is of the view that to decide the issue with regard to the impugned order passed by the first respondent, the pleadings with regard to the validity of the adoption deed and its genuineness are irrelevant, as, to question any valid document and non-suit the adoption, the forum is different. It is a matter of evidence based on proof and disproof on certain facts. Therefore, this Court is of the view that irrespective of various pleadings made in the writ petition, those pleadings are irrelevant to the issue, which pertains only to issuance of Legal Heirship Certificate.



WEB COPY



6. Mr.R.Srinivas, learned counsel for the petitioner, mainly argued on the validity of the adoption deed. It is his contention that as per Section 10 (iv) of the Hindu Adoptions and Maintenance Act, 1956, the adoption is void. According to him, since the person adopted at the relevant point of time was aged about 24 years, the Tahsildar ought not to have issued the Legal Heirship Certificate in favour of the second respondent. It is his further contention that burden also lies on the person, who pleads adoption, to establish the issue. When serious objections had been raised, the same were not considered by the Tahsildar. He also submitted that a Will was also executed in favour of the petitioner on 18.02.2015 bequeathing all the properties of Dr.M.A.M.Ramaswamy. Now, the Will is in the process of Probate in T.O.S.No.27 of 2021 on the file of this Court. Therefore, his contention is that the petitioner has every right to object to the issuance of Legal Heirship Certificate in favour of the second respondent. In support of his submissions, the learned counsel relied upon the following decisions :

(i) Rathnamma and Others v. Sujathamma and Others, (2019) 19 SCC 714, wherein it has been held as under :

"16. This Court in a judgment reported as Salekh Chand (Dead) by LRs v. Satya Gupta & Ors., while dealing with the claim of adoption under the Hindu Adoption and Maintenance Act, 1966, held as under:



22. *It is incumbent on party setting up a custom to allege and prove the custom on which he relies. Custom cannot be extended by analogy. It must be established inductively and not by a priori methods. Custom cannot be a matter of theory but must always be a matter of fact and one custom cannot be deduced from another. It is a well-established law that custom cannot be enlarged by parity of reasoning."*

(ii) K.M.Subramaniam v. Parvathiammal, AIR 2017 Mad 37, wherein, it is held as under :

"23. The Hon'ble Supreme Court had again reiterated in Daulatrao Jairamji vs. Harishchandra and others reported in AIR 1972 SC 2446, the burden of proof of adoption is on the person, who claims adoption.

24. If we analyse the evidence on record, in light of the observations of the Hon'ble Supreme Court referred to above, we find that the case of adoption put forth by the respondent should not have been accepted by the Trial Court. The reasons are not far to seek. The case of the 1st defendant in his written statement is that the adoption took place during the month of Avani 1960. Admittedly the 2nd plaintiff was born in the year 1940. Therefore, he was nearly 20 years old on the date of the alleged adoption. After coming into force of Hindu Adoption and Maintenance Act, a child above the age of 15 cannot be adopted, unless such adoption is shown to be according to the custom or usage of community to which the parties belonged to, in view of prohibition contained under Section 10(iv) of the Hindu Adoptions and Maintenance Act 1956. In the case on hand, custom or



usage in the community to which the parties belong to has neither been pleaded nor proved."

WEB COPY

7. On the other hand, Mr.M.S.Krishnan, learned Senior Counsel appearing for the second respondent, vehemently contended that the petitioner has no locus to challenge the Legal Heirship Certificate and that this Court is not the appropriate forum to agitate the validity of adoption. It is his contention that the petitioner is well aware of the adoption from the year 1996; he also participated in the adoption proceedings and he has knowledge about the adoption; however, no suit whatsoever has been filed challenging the said adoption. He would also submit that even assuming that the Will is claimed to have been executed by Dr.M.A.M.Ramaswamy in favour of the Petitioner Trust, it does not take away the relationship of the parties. According to him, even in the event of the Will being probated, the consequence would be that only the beneficiary will get the properties, in which event, the relationship of the parties, as established by the adoption deed, will not be taken away. His further submission is that except for the Will, the petitioner has no other right; and only on the basis of the Will, he claims right, but the Will is the subject matter of T.O.S. and unless and until the Probate is granted, the petitioner has no right either in the properties or in the family to question the validity of adoption or relationship of the parties. He would also submit that the petitioner is a stranger to the family and adoption cannot be challenged by any third party. Therefore,



it is his contention that the Tahsildar has issued the Legal Heirship Certificate in favour of the second respondent, taking note of the previous relationship and the existing documents pertaining to the relationship of the family, after hearing the objections of the parties, and, as such, the said Legal Heirship Certificate cannot be quashed in these writ proceedings. In support of his contentions, the learned Senior Counsel relied upon the following decisions :

(i) Kadappa Satyappa Terani v. Siddappa Khandappa Terani and Ors., MANU/KA/4321/2022, wherein, it is held as follows :

"15. This Court also has to take note of the judgment rendered by the Co-ordinate Bench of this Court in Veerabhadrayya R.Hiremath vs. Irayya A.F.Basayya Hiremath, MANU/KA/0306/2006 : ILR 2006 K 1740. This Court was of the view that except genitive parents, adoptive parents and the adopted son, others have no locus to question the validity of adoption. The principles laid down by the Co-ordinate Bench are squarely applicable to the present case on hand."

(ii) Mst.Deu and Others v. Laxmi Narayan and Others, (1998) 8 SCC 701, wherein, it has been held as under :



"3. In view of Section 16 aforesaid whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the persons mentioned therein, the court shall presume that the adoption has been made in compliance with the provisions of the said Act unless and until it is disproved. According to us, it was not open to the defendants of the said suit for partition to collaterally challenge the said registered deed of partition. In view of Section 16 of the aforesaid Act it was open to them to disprove such deed of adoption but for that they had to take independent proceeding. The High Court was fully justified in directing that the respondent be substituted in place of Smt Phulla on the basis of the registered deed of adoption produced before the court."

(iii) Sumitra Bai v. Baratu and Others, 2019 SCC OnLine Chh 333, wherein, it has been held as under :

"22.The Karnataka High Court in the matter of Verabhadrayya R.Hiremath v. Irayya A.F.Basayya Hiremath, has held that in the normal circumstances, adoption can be challenged either by the natural parents of the boy or by the adoptive parents or by the child who has been given in adoption.

23. Drawing analogy from the said principle, it is held that defendants No.2 to 7 being total strangers to the fact of adoption cannot set up the plea of adoption of Vishambhar by Vishal Lodhi in absence of the plea having been taken by Udairam, as he filed written statement



before the trial Court prior to his death and even Vishal Lodhi was not examined by the defendants to at least prove the fact of adoption. Therefore, the plea of adoption taken by defendants No.2 to 7 and found established by the Court, the fact that even there is not an iota of evidence to establish the fact of adoption, the finding regarding adoption of Vishambhar by Vishal Lodhi is hereby set aside."

(iv) Veerabhadrayya R Hiremath and Others v. Irayya A.F.Basayya

Hiremath, ILR 2006 KAR 1740, wherein, it is held a under :

"12. But I am unable to accept the arguments advanced by the learned Counsel for the appellants for the following reasons:

The appellant admits the execution of the adoption deed taking the defendant in adoption by Basayya. According to the appellant the adoption deed as per Ex.D1 came into existence by playing fraud on deceased Basayya. According to him, Basayya died six years prior to the institution of the suit. It is also his case that he came to know of adoption of the defendant by Basayya in the year 1979. The suit was filed in the year 1992. If Basayya died six years prior to the institution of the suit, in all probabilities Basayya was alive till 1986. If plaintiff had come to know of the adoption deed in the year 1979, if really adoption deed had been obtained by the defendant by playing fraud on Basayya, there was no difficulty for the appellant-plaintiff to request Basayya to challenge the adoption deed contending that the same was obtained by misrepresentation or fraud. But such an action has not been taken by the



plaintiff, requesting Basayya to file a suit to challenge the adoption deed. Admittedly, the suit is filed six years after the death of Basayya and 13 years after coming to know of the adoption of the defendant by Basayya. In the normal circumstances, adoption can be challenged either by the natural parents of the boy or by the adoptive parents or by the child who has been given in adoption. But in the instance case, the plaintiff is a stranger to the defendant. If really, a fraud had been played on Basayya, it-was for Basayya to file a suit for cancellation of the adoption. The very fact that the plaintiff had not requested Basayya to file a suit for cancellation on the ground that Ex.D1 had come into existence on account of the fraud played by Police-Patil of Astakatti village on Basayya, it is not open for the plaintiff to challenge the adoption of defendant, six years after the death of Basayya. In other words/ this Court is of the opinion there is no cause of action for the plaintiff to file the suit."

(v) Sukhbir Kaur v. Balwant Singh and Another, 2016 SCC OnLine P&H

19487, wherein, it has been held as under :

"46. Here a question arises as to who can challenge the adoption and whether defendants have any locus standi to challenge the adoption. The first Appellate Court, while discarding the plea of plaintiff that she is adopted daughter of Dalip Singh, has looked into all the facts like non-performance of required ceremonies; not giving of information/notice to entire village, producing of bahi entry of expenses of ceremony, calling the relatives etc. The fact of the matter is that adoption deed was executed by Dalip Singh. He had never challenged the adoption of



Sukhbir Kaur. Balwant Singh or attorney of Dalip Singh had no locus standi whatsoever to challenge the adoption deed. Neither of the plea of Balwant Singh, if accepted, confer him any right, title or interest in the property of Dalip Singh by natural succession. In normal circumstances, adoption can be challenged either by natural parents or by adoptive parents or the child who has been given in adoption. A stranger lacks the authority to challenge the adoption deed."

8. Mr.V.Arun, learned Additional Advocate General, appearing for the first respondent-Tahsildar, has submitted that the Tahsildar has followed due process of law, invited objections, and taking note of the adoption deed and the previous Legal Heirship Certificate issued after the death of the adoptive mother and the Ration Card, wherein the second respondent was shown as a member of the family of the adoptive mother, issued Legal Heirship Certificate. Therefore, his contention is that when the Legal Heirship Certificate has been issued by following due process of law particularly the Revenue Standing Orders and the G.O.Ms.No.581, the same cannot be faulted. It is also his submission that mere issuance of Legal Heirship Certificate will not take away the rights of the parties and it is for the party to establish the right in a competent Civil Court and not in the writ petition. Accordingly, he prayed for dismissal of the Writ Petition.



WEB COPY



9. After hearing the parties and on perusal of the records, this Court is of the view that though the relief itself has been camouflaged as if it is against the Legal Heirship Certificate, the entire pleadings and other aspects are beyond that. What is pleaded in the Writ Petition is just like the pleadings in the Civil Suit. The main ground of attack of Legal Heirship Certificate is of the adoption of the year 1996, which is registered as per law.

10. On mere affidavit and assumption, the Writ Court cannot go into the question whether the adoption is void or valid in the eye of law, as it has to be proved in the manner known to law. One cannot merely assume that the adoption is void merely because the adopted son crossed the age of 15 years at the relevant point of time. It is relevant to note Section 10 of the Hindu Adoptions and Maintenance Act, 1956, which reads as under :

"10. Persons who may be adopted.— No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

- (i) he or she is a Hindu;*
- (ii) he or she has not already been adopted;*
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;*



(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

11. On perusal of the above statutory provision, it is clear that there is no absolute bar for adopting a person, who completed the age of 15 years, if there is custom or usage applicable to the parties. Such being the legal position, whether the custom is prevalent in a particular community is a matter of evidence, which has to be proved before the competent Civil Court and not in the Writ Petition before this Court. Therefore, merely on the ground that the adopted son was beyond the age of 15 years at the relevant point of time, this Court cannot come to the conclusion that the very adoption itself is void as per Section 10 of the Act.

12. If the petitioner claims any right on the basis of the registered Will, said to have been executed by Dr.M.A.M.Ramaswamy on 18.02.2015, this Court is of the view that if at all the Will is established and probated as per law, the petitioner's status will be only as the beneficiary under the Will and his position will not be elevated to that of a legal heir to the original executor, namely, Dr.M.A.M.Ramaswamy. Even if the Will is proved, the petitioner is entitled only to the property bequeathed under the Will



and not any more and his position will not be elevated to that of relationship as Class 1 or Class 2 legal heir. Such being the position, the petitioner cannot challenge the adoption. It is for him to work out his remedy before some other forum particularly the Civil Court. Since the rights of the parties involved not only with regard to the Will but also other properties, the same have to be established by adducing proper evidence before the Civil Court and not before this Court in the Writ Petition. As far as the issuance of Legal Heirship Certificate is concerned, it has been issued by the first respondent – Tahsildar, after hearing the objectors and considering other documents, namely, the adoption deed, which was registered in the year 1996, and the Legal Heirship Certificate, issued in the name of the second respondent when the adoptive mother died, wherein the adoptive father was also shown as one of the legal heirs. That apart, the Family Card was also taken into consideration by the Tahsildar, Therefore, the Tahsildar had issued the Legal Heirship Certificate in favour of the second respondent, on forming an opinion. It is also to be noted that mere issuance of Legal Heirship Certificate will not take away the rights of any party.

13. A Full Bench of this Court, in P.Venkatachalam v. The Tahsildar, in W.P.No.25247 of 2021, has held that the certificates issued by the Tahsildar amount to nothing more than a relationship certificate, reflecting the opinion of the Tahsildar as to the relationship of the applicant and others named therein with the deceased.



Consequently, the certificate issued by the Tahsildar does not affect the legal right of any party and has no bearing on the status of a legal heir, which is conferred on an individual under his/her personal law. It is also held therein that in the absence of any conflict with any primary or delegated legislation holding the field, G.O.Ms.No.581 Revenue Department dated 03.04.1987 casts a duty on the Tahsildar to issue a legal heirship certificate as per the norms and guidelines prescribed by the Commissioner of Land Administration. G.O.Ms.No.581 Revenue Department dated 03.04.1987 is undoubtedly a law as it has been issued in exercise of executive power under Article 162 of the Constitution of India. Consequently, when the Tahsildar keeps the application pending and does not decide on it one way or the other, a writ of mandamus may be issued by the High Court directing the Tahsildar to decide the application in terms of G.O.Ms.No.581 Revenue Department dated 03.04.1987 and the applicable circulars.

14. Therefore, this Court is of the view that mere issuance of Legal Heirship Certificate, expressing the opinion as to the relationship of the parties, will not take away the rights of the parties, particularly the petitioner and the second respondent. The right independent has to be established before competent Civil Court. As such, mere issuance of Legal Heirship Certificate by the first respondent will have no effect on the rights of the parties, except to show the relationship between the deceased and the second respondent. In other aspects, the same has to be established before a competent Civil Court. Therefore, this Court does not find any merit in this Writ Petition.



15. Further, even now, it is premature to contend that the petitioner has got absolute right at this stage until the Will is probated and his right recognised by a Court of Law. Petitioner being a stranger to family cannot question such documents, wherein the second respondent has been declared as the adopted son. It is also well settled that testamentary instruments can be challenged only by the members of the family and strangers to the family are not competent to challenge the said documents.

16. In such view of the matter, the question of setting aside the impugned order, namely, the Legal Heirship Certificate, issued by the first respondent – Tahsildar, does not arise. Accordingly, this Writ Petition is dismissed. No costs. Consequently, the connected W.M.P.No.13094 of 2016 is closed.

Index : Yes/No

13-

10-2022

Internet : Yes/No

Speaking / Non-speaking Order

dixit

To



WELL 100V

The Tahsildar,
Mylapore-Triplicane Taluk,
Mylapore,
Chennai- 600 028.

18/19



W.P.No.15005/2019

N.SATHISH KUMAR,J.



WEB COPY

19/19



W.P.No.15003/2016

dixit

W.P.No.15003 of 2016

13-10-2022