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W.P. No.19175 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19175 of 2018

S.Manibharathi

... Petitioner

Vs

1.The Revenue Divisional Officer,
Revenue Divisional Office,
Chidambaram – 608 001.

2.The Tahsildar,
Chidambaram Taluk Office,
Chidambaram – 608 001.

3.Sekar

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the 1st and 2nd respondents to expunge the name of 3rd respondent from all records and entries maintained by them including Legal Heir Certificate issued by the 2nd respondent bearing Pa.Mu.(A4)/3826/2017 dated 28.09.2017 and issue a fresh Legal Heir Certificate citing the petitioner, S.Manibharathi, as the only Legal Heir of late. Ambika considering the representation dated 16.05.2018 and 26.03.2018 submitted to the 1st and 2nd respondent respectively.



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For Petitioner : Mr.S.P.Vijayaragavan

For Respondents : Mr.N.Naveen Kumar
Government Advocate
for R1 & R2
Mr.P.Srinivasan
for R3

ORDER

This writ petition has been filed by the petitioner for the following relief:-

“To direct the 1st and 2nd respondents to expunge the name of 3rd respondent from all records and entries maintained by them including Legal Heir Certificate citing the petitioner, S.Manibharathi, as the only Legal Heir of late.Ambika considering the representation dated 16.05.2018 & 26.03.2018 submitted to the 1st and 2nd respondent respectively.”

2.It is the case of the petitioner that the 3rd respondent was married to petitioner's aunt name Devika on 04.05.1991 and that during the subsistence of the aforesaid marriage, the 3rd respondent developed intimacy with petitioner's mother and said to have later married her on 04.09.1995 and that the petitioner was born out of the afraid illicit marriage.



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3.It is submitted that the 2nd respondent has wrongly included the 3rd respondent as the L.R's of the petitioner's mother as there is no valid marriage between the petitioner's mother and the 3rd respondent in the eye of law, during the subsistence of 1st marriage solemnized between petitioner's aunt namely Devika, sister of petitioner's deceased mother and the 3rd respondent on 04.05.1991.

4.The learned counsel for the respondent has also drawn attention to affidavit, wherein, it is stated that the so called marriage between the 3rd respondent and the petitioner's mother Ambika was not sanctioned under Section 2(1) and Section 11 of the Hindu Marriage Act and therefore the 2nd respondent ought not to have issued the legal heir certificate on 28.09.2017 by including the 3rd respondent as the L.R's of the petitioner's late mother Ambika. It is therefore submitted that in the name of the 3rd respondent is liable to be expunged from Legal Heir Certificate.

5.The learned counsel for the 1st and 2nd respondents would submit that the Legal Heir Certificate was issued, after a spot enquiry was conducted and based on the report from the Village Administrative, Chidambaram and



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Revenue Officer, Chidambaram.

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6.It is therefore submitted that there is no merits in the present writ petition, as the Legal Heir Certificate was issued after enquiry and report of the Village Administrative Officer and the Revenue Officer.

7.The learned counsel for the third respondent would submit that the marriage between the third respondent and the petitioner's mother is not in dispute. It is submitted that marriage was solemnized on 04.09.1995. Though during the subsistence of 1st marriage, with petitioner's aunt and sister of his mother with Devika on 04.05.1991. It is submitted that the petitioner also no locus standi to quash the status of the marriage indirectly by directing the official respondents herein to ex-punge his name from the legal heir certificate issued which was issued after spot enquiry after the death of Ambika/the mother of the petitioner.

8.That apart, it is submitted that the said Devika namely the petitioner's aunt also not questioned the status of the second marriage by initiating proceedings in a Court of law. Therefore the present writ petition is liable to be



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9.It is submitted that no proceedings have been initiated for alleged the offence committed by the respondents. That apart, it is submitted that the petitioner is duty bound to maintain the third respondent under Section 125 of the CR.P.C and under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

10.By way of rejoinder, the learned counsel for the petitioner submits that there was a dispute with the third respondent who married Devika on 04.05.1991 and therefore the subsequent marriage between the 3rd respondent and the petitioner's mother was illegal. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in **Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad and another** (2013) 2 SCC 137 to state that the 2nd marriage was void *ipso jure*, that is, void from the very inception. Relevant portion of the order reads as under:-

“17.While considering the provision of Section 11 of the Hindu Marriage Act, 1955 this Court in *Yamunabai Anantrao Adhav V. Anantrao Shriram Adhav* (SCC p.534, para 3) has taken the view that a marriage covered by Section 11 is void *ipso jure*, that is, void from the very inception. Such



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a marriage has to be ignored as not existing in law at all. It was further held by this Court that a formal declaration of the nullity of such a marriage is not a mandatory requirement though such an option is available to either of the parties to a marriage. It must, however, be noticed that in *Yamunabai* there was no dispute between the parties either as regards the existence or the validity of the first marriage on the basis of which the second marriage was held to be ipso jure void.

18.A similar view has been expressed by this Court in a later decision in *M.M.Malhotra V. Union of India* wherein the view expressed in *Yamunabai* was also noticed and reiterated. However, the facts in which the decision in *M.M.Malhotra* was rendered would require to be noticed in some detail.”

11.The learned counsel for the petitioner also placed reliance on the decision of the Allahabad High Court, wherein the aforesaid decision of the Hon'ble Supreme Court was considered. He further drew attention of this Court to the decision of the Hon'ble Full Bench of the Karnataka High Court in the case of **Abbayolla M.Subba Reddy Vs. Padmamma** AIR 1984 Kar 41, wherein, para 19 it has been held as under:-

“While the personal law governing the parties prohibits bigamous marriage, on a party of reasoning, its can also be stated that the expression “Hindu Wife” in Section 18 means only a legally wedded wife and not a wife whose marriage is void under the provisions of the Hindu Marriage Act. The second marriage/bigamous marriage being void cannot create a legal statute of “husband” and “wife” between the parties. That marriage is void ab initio and the woman cannot get the



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status of a wife nor the male gets the status of husband to her. Therefore, she cannot get a right to claim maintenance under Section 18 of the Act.”

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12. Therefore, it is submitted that there is no merits in the submission of the respondent.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

14. The facts are not in dispute. The relationship between the petitioner and the third respondent is different from the relationship between the petitioner's mother deceased Ambika and the third respondent. During the subsistence of first marriage between the third respondent and Devika (Maternal Aunt of the petitioner), the marriage that was solemnized on 04.09.1995 between the petitioner's mother and the 3rd respondent was void *initio*. The law has declared by the Hon'ble Supreme Court in **Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad and another** (2013) 2 SCC 137 referred to supra by the learned counsel for the petitioner. It has been clearly explained that a marriage covered by Section 11 is void *ipso jure*, that is, void from the very inception. Since the marriage between the third



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respondent and the petitioner's mother deceased mother Ambika is void initio,

the question of including the third respondent as the legal heir of the petitioner's mother does not arise. The law has not recognized. Such a relationship between the two adults, when the previous marriage is in subsistence and the other spouse is alive.

15.Considering the above, I am inclined to allow this writ petition. The official respondents are directed to issue a fresh legal heir certificate to the petitioner within a period of three weeks from the date of receipt of a copy of this order, after expunging the name of the third respondent from the impugned legal heir certificate and after making suitable correction in the Register.

16.Accordingly, this writ petition stands allowed. No costs.

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Index: Yes/ No
Internet : Yes/No
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C. SARAVANAN, J.

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