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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

WP No. 27186 of 2019
and WMP Nos.26587 & 26588 of 2019

A.Cynthia Ailanto Nancy ... Petitioner

vs.

1. The District Collector
Vellore District, Vellore.
2. The Revenue Divisional Officer,
Revenue Divisional Office,
Katpadi Taluk, Katpadi,
Vellore District.
3. The Tahsildar,
Katpadi Taluk, Vellore District.

4. C.J.Kirubakaran

5. K.Malarkodi ... Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents 1 to 3 by proceedings in petition bearing No.2019/9005/04/112280/0624 dated 24.06.2019 and quash the same and consequentially direct the 3rd respondent to remove the name of the 4th & 5th respondents namely C.J.Kirubakaran and K.Malarkodi in the legal heir ship certificate dated 05.03.2019 issued in D.Dis:629/2019 and certificate No.72/2019 and issue fresh legal heir ship certificate to the petitioner and her children namely B.Samuel Richards and B.Ziona Judith.



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For Petitioner : Mr.P.Saravana Sowmiyan

For Respondents : Mr.P.Anandakumar

Government Advocate, for R1 to 3

No appearance for RR4 & 5

O R D E R

The petitioner seeks a direction to remove the name of the respondents 4 and 5 from the Legal Heirship Certificate issued by the Tahsildar recognising the respondents 4 and 5 as the legal heirs of deceased Babu, husband of the petitioner.

2. According to the petitioner, the deceased Babu converted to Christianity and married the petitioner under the Special Marriage Act. It is the further contention of the petitioner that the parents of such a convert, who gets married under the Special Marriage Act, are not the legal heirs of the convert and hence inclusion of their names in the Legal Heirship Certificate is incorrect. The learned counsel would draw my attention to the provisions of Section 33 of the Indian Succession Act, in support of his contention. Reliance is also placed on Sections 19 and 21 of the Special Marriage Act, I do not think that the question as to whether the parents of the deceased person, who had converted and married under the Special Marriages Act, would be his legal heirs or not could be conveniently decided under Article 226 of the Constitution of India. A full bench of this court in P.Venkatachalam -Vs- Thasidhar, Kumarapalayam etc batch Dated 17-06-2022 has already taken the view that a Legal Heirship Certificate issued by the Tahsildar is not conclusive proof of legal heirship. The issuance of Legal Heirship Certificate cannot prevent the petitioner from approaching the regular Civil Court claiming whatever rights she has to the properties of her deceased husband.

3. In such view of the matter, the Writ Petition is disposed of with liberty to the petitioner to approach the appropriate Civil Court and seek a declaration. The fact that the parents of the deceased are shown as the legal heirs of the deceased in the Legal Heirship Certificate will not stand in the way of the petitioner establishing her rights with reference to the above referred to statutory provisions before the appropriate Civil



Court. It is also stated that the suit for partition has been initiated by the fourth respondent in OS No.117 of 2021 on the file of the III Additional District Judge (FC), Vellore, and the same is said to be pending. It will be open to the petitioner to establish her rights in the said suit itself. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

jv

To

- 1.The District Collector
Vellore District, Vellore.
- 2.The Revenue Divisional Officer,
Revenue Divisional Office,
Katpadi Taluk, Katpadi,
Vellore District.
- 3.The Tahsildar,
Katpadi Taluk,
Vellore District.

+1cc to Mr.P.Saravana Sowmiyan, Advocate SR.No.38898
+1cc to the Government Pleader SR.No.39623

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SKM(CO)
CB(08/07/2022)