IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.9104 of 2023
and W.M.P.No.9241 of 2023

1. P.Nirmala
2. Harish Noel ... Petitioners

Vs.

1. The Special Secretary to Government,
Government of Tamil Nadu,
Public (RH-I) Department,
Secretariat, Fort St.George,
Chennai-600009.

2. The District Collector,
Chennai District,
Singaravela Maligai,
Rajaji Salai,
Chennai-600 001.

3. The Tahsildar,
Ambattur Taluk,
Ambattur,
Chennai-600053.
4. Lucy Alice ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second respondent to disburse the sum of Rs. 46,69,489/- together with accrued interest, if any, being the legal dues and end of service dues in respect of late Shri Noel Prabhu Edward who died in Saudi Arabia and received by the second respondent as per the first respondent's Letter No. 39893/ RH.i (1) / 2022- 1 dated 21.11.2022 to the first petitioner.

For Petitioner : Mr.D.Moses Jeyakaran
For R1 to R3 : Mr.U.Baranidharan, AGP

For R4 Mr.R.Ramesh

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ORDER

The petitioners, by the present petition, seek disbursement of the amount of Rs.46,49,489/-, along with accrued interest, being the service benefits of Late Shri Noel Prabhu Edward, who died in Saudi Arabia, which has been received by the 2nd respondent.

2. It is the case of the petitioners that the 1st petitioner married Noel Prabhu Edward on 30.04.1992, according to Christian rites and customs and marriage registration certificate was also issued. Subsequently, they were blessed with a male child namely Harish Noel, viz., the 2nd petitioner. The said Noel Prabhu Edward was employed in the Kingdom of Saudi Arabia and he passed away on 21.08.2022. Since the deceased and the petitioners are Christians, the estate of the deceased would devolve on the petitioners as per Section 33 of the Indian Succession Act, 1925 (in short ‘the Act’). In order to

claim the death benefits of the deceased, the petitioners applied for issuance of legal heirship certificate to the 3rd respondent. The 3rd respondent issued a legal heirship certificate on 06.10.2022, by including the name of the mother of the deceased, viz., Lucy Alice, the 4th respondent also as his legal heir along with the name of the petitioners. As the said Lucy Alice does not come under the category of I Class legal heir of the deceased as per the Indian Succession Act, the 1st petitioner requested the 3rd respondent to delete her name from the legal heir certificate. However, the same was not considered.

3. In the meanwhile, a communication dated 28.09.2022 was issued by the Indian Embassy at Riyadh in and by which a sum of Rs.46,69,489/-, which is the end of service benefits dues in respect of the deceased, was issued in favour of the Chief Secretary, Government of Tamil Nadu with a request to disburse the said amount to all the legal heirs of the deceased and another communication dated 21.11.2022, from the first respondent to the second respondent to disburse the service benefits of the deceased to the legal heirs of the deceased. However, upon coming to know of the same, the 4th respondent rushed to the Collectorate to stake her claim for payment out from the estate of the deceased. As the deceased and the petitioners are Christians,

the estate of the deceased is to be decided only as per the Indian Succession Act. Hence, the petitioners alone are entitled to receive the said amount and the fourth respondent has no right whatsoever over the same. That being so, the petitioners sent legal notices dated 10.01.2023 and 25.02.2023, to the 2nd respondent to disburse the amount payable to the petitioners excluding the 4th respondent. Since there was no response to the said request, the present petition has been filed.

4. Learned counsel appearing for the petitioners submit that the issue raised in the present petition is no more *res integra* as it has been decided by this Court in the case of ***Latha & Ors. – Vs – The Tahsildar & Ors. (W.P.No.26544 of 2022, dated 05.12.2022).*** Learned counsel also took the aid of the decision of the Kerala High Court in the case of ***Siji Roy Vs. The State of Kerala (WP (C). No.20659 of 2019 (F) - dated 09.11.2020),*** wherein it was held that as per Section 33 (a) of the Act, where a person had died intestate, the estate will devolve only upon the widow and lineal descendants and the 4th respondent does not come with the purview of lineal descendant and, therefore, not entitled to any share in the property. It is the further submission of the learned counsel that only where the intestate has not

left a widow and any lineal descendants, then the provisions of Sections 41 to 48 will come into play. The deceased being survived by widow and lineal descendant in the form of son, viz., the 2nd petitioner, the 4th respondent cannot claim any right and the mere fact that the name of the 4th respondent is shown as a legal heir would not clothe the 4th respondent with any right over the property of the deceased and, therefore, fourth respondent is not entitled for the share in respect of the property of the deceased. Accordingly, he prayed for passing appropriate orders.

5. Per contra learned counsel appearing for the fourth respondent contended that though Section 33 (a) of the Act is not applicable to the present case on hand and only Section 33 (A)(5) would stand attracted. It is the further submission of the learned counsel that as per Section 33 (A) (5), clearly spells out that the property of an Indian Christian would be entitled for distribution to all the legal heirs, irrespective of the widow and other lineal descendants. Therefore, the 4th respondent is equally entitled for a share in the death benefits of the deceased on par with the other legal heirs. Accordingly, he prays to dismiss the writ petition.

6. Learned Additional Government Pleader appearing for the respondents 1 to 3 submits that the death benefits of the deceased would be distributed as per the directions of this Court.

7. Heard learned counsel appearing on either side and perused the materials placed before this Court.

8. Before adverting to the issue in the present case, as the whole issue revolves around Section 33 and 33-A, it would be relevant to quote the same for better appreciation :-

> "***33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.***-*Where the intestate has left a widow-*
>
> *(a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;*
>
> *(b) if he has left no lineal descendants, but has left persons who are of kindered to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindered to him, in the order and according to the rules hereinafter contained;*
>
> *(c) if he has left none who are of kindered to him, the whole of his property shall belong to his widow.*

33-A. Special provision where intestate has left widow and no lineal descendants.—

(1) Where the intestate has left a widow but no lineal descendants and the net value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow.

(2) Where the net value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent. per annum until payment.

(3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of section 33 as if it were the whole of such intestate's property.

(4) The net value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expenses of the intestate, and all other lawful liabilities and charges to which the property shall be subject.

(5) This section shall not apply—

(a) to the property of—

(i) any Indian Christian,

(ii) any child or grandchild of any male person who is or

was at the time of his death an Indian Christian, or

(iii) any person professing the Hindu, Buddhist, Sikh or Jaina religion the succession to whose property is, under section 24 of the Special Marriage Act, 1872 (3 of 1872) regulated by the provisions of this Act;

(b) unless the deceased dies intestate in respect of all his property.]"

9. Adverting to the facts, which are not in dispute, the petitioners are Christians and the deceased is also a Christian, who was married to the 1st petitioner and they begotten the 2nd petitioner through the matrimonial tie. The passing away of the deceased in Saudi Arabia has brought the whole issue, as the death benefits due and payable to the deceased have been forwarded by his employer to the Indian Embassy, through whom request is made to disburse the same to the legal heirs.

10. There could be no quarrel with the fact that with regard to succession to the estate of the deceased, the Indian Succession Act would squarely be applicable to the case of the petitioners, which is also not disputed by the 4th respondent. However, the issue is mainly with regard to the application of the relevant provision of the Indian Succession Act. While the

petitioners claim that Section 33 of the Act is applicable, it is countered by the 4th respondent by relying upon Section 33-A (5) of the Act.

11. Section 33 and 33-A of the Act have already been extracted supra. Section 33, in unambiguous term, spells out that where the intestate has left widow and lineal descendants, then one-third of his property shall be to the benefit of the widow and the remaining two-third shall go to his lineal descendants according to the rules. In the case on hand, the 1st petitioner is the wife, who is the widow and the 2nd petitioner is the son, who is a lineal descendant.

12. Section 33-A is a special provision relating to where the deceased has left widow and no lineal descendants. In the case on hand, the deceased is survived by widow and also lineal descendants and, therefore, even at the very outset Section 33-A would not be applicable. Even otherwise, the reliance placed on sub-section (5) of Section 33-A clearly reveals that this Section, meaning thereby, Section 33-A would not be applicable to the property of any Indian Christian and it does not relate to Section 33, which is squarely applicable to the case on hand.

13. As already aforesaid, the deceased is survived by the widow and also lineal descendant in the form of 1st and 2nd petitioner. That being the case, Section 33 directly comes into play and the 4th respondent cannot gain any benefit by resorting to Section 33-A as the said provision is applicable only where the intestate has left widow and no lineal descendant. Therefore, the contention advanced by the learned counsel for the 4th respondent is wholly misconceived.

14. Identical issue fell for consideration before the Kerala High Court in the case of ***Siji Roy vs. The State of Kerala (W.P.(C).No.20659 of 2019 (F) dated 09.11.2020)***, wherein the Kerala High Court held as under:

> "*6. In the case on hand, the deceased left behind his widow and three children. If that be the case, one third of his property shall belong to the widow and the remaining two thirds shall go to his lineal descendants, meaning his three children. This Court, in Renuka K.K.V State of Kerala and others (2015(1) KLT 191) after detailed evaluation of the Kerala Village Manual as well as the Transfer of Registry Rules, 1996 had occasion to hold that legal heirship certificates are intended specifically for movable assets, the value of which is less than Rs.5,000/-.*

7. In such circumstances, there is no justification on the part of the fourth respondent to insist that mutation can be effected only in the names of persons whose names are mentioned in the legal heirship certificate. Exhibit P4 will stand quashed and the fourth respondent is directed to consider the request of the petitioner to effect mutation afresh in the light of the provisions of the Indian Succession Act, 1925 and effect mutation as per the provisions of law."

15. Similar issue has also been considered by this Court in ***Latha & Ors. Vs. The Thasildhar & Ors. (W.P.26544 of 2022 dated 05.12.2022)*** and this Court held as under:

"5. This action of the 2nd respondent cannot be sustained, in view of the provisions of Indian Succession Act. Section 33 of the Indian Succession Act enumerates the legal representatives. When the deceased person leave behind the widow and lineal descendants, the widow and lineal descendants will alone become the legal heirs of the deceased under the Scheme of the Indian Succession Act. Therefore, the legal heirship certificate can be issued only to those persons who are recognized as legal heirs under the personal law applicable to a person. Neither the Government Order issued under G.O.Ms.No.478 dated 29.09.2022 nor the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 can alter the legal heirs prescribed by the Indian Succession Act. If the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 confers certain benefits on the mother of the individual, as against the daughter-

in-law, it is well open to the mother to claim such benefits under the enactment. The legal heriship certificate issued cannot be cancelled and the mother cannot be included in such legal heirship certificate.

6. Mr.K.Sathish Kumar, learned counsel appearing for the 3rd respondent would however contend that under Section 43 of the Indian Succession Act, the mother would be a legal heir, this overlooks the position that Section 43 relates to Rules of distribution where the deceased has left no lineal descendants. Once there is lineal descendants, the provisions of Sections 41, 42 and 44 will not apply.

7. Therefore, I am unable to sustain the order of the Revenue Divisional Officer dated 27.12.2021 and the same is accordingly set aside. As a consequence, the new legal heirship certificate dated 14.03.2022 is cancelled. The Authorities are directed to re-issue old legal heirship certificate dated 03.08.2019 which is held to be valid. No costs. Consequently, the connected miscellaneous petition is closed."

16. Not only the dictum laid down in the aforesaid decisions support the case of the petitioner, but even the provision of law, viz., Section 33 of the Act clearly leans in favour of the petitioners and in the aforesaid scenario, there cannot be any doubt that it is only the petitioners who are entitled for the death benefits in respect of the deceased. Further, it is to be placed on record that merely because the name of the 4th respondent is shown as a legal heir in

the legal heirship certificate that would not give any benefit to the 4th respondent to claim any share in the property of the deceased, when the Act mandates that it is only the widow and the lineal descendants, who alone are entitled to the property of the deceased. Therefore, the respondents 2nd is bound to release the death benefits of the deceased in favour of the petitioners and no portion of the benefits is payable to the 4th respondent.

17. For the reasons aforesaid, this writ petition is allowed with a direction to the 2nd respondent to disburse the death benefits of the deceased, viz., Noel Prabhu Edward in favour of the petitioners as per Section 33 of the Act within a period of two (2) weeks from the date of receipt of a copy of this order. In the circumstances of the case, there shall be no order as to costs. Consequently, W.M.P.No.9241 of 2023 is ordered as prayed for on payment of single Court fee.

28.04.2023

Index : Yes / No
Speaking order / Nonspeaking order
Netrual Citation Case : Yes / No
(rap)

M.DHANDAPANI, J.

(rap)

To

1. The Special Secretary to Government,
   Government of Tamil Nadu,
   Public (RH-I) Department,
   Secretariat, Fort St.George,
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2. The District Collector,
   Chennai District,
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W.P.No.9104 of 2023

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