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S.A.No.305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

MR.JUSTICE N.SESHASAYEE

S.A.No.305 of 2023

1.Parvathi
2.Nandhini @ Venkattammal

... Appellants

Vs.

1.The State of Tamil Nadu
Rep. by its Representative,
District Collector,
Dharmapuri District.

2.The Tahsildar,
Palacode, Dharmapuri District.

3.The Village Administrative Officer,
Velahalhalli Village, Palacode Taluk,
Dharmapuri District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, seeking to set aside the judgement and decree dated 13.12.2022 in A.S.No.14 of 2022 on the file of the learned Subordinate Judge, Dharmapuri, confirming the Judgement and Decree dated 15.12.2021 in O.S.No.168 of 2018 on the file of the learned District Munsif, Palacode.



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For Appellants : Mr.R.Selvakumar
For Respondents : Mr.S.P.Karthik
Government Advocate

JUDGMENT

The plaintiffs have filed a suit for declaration that they are the legal heirs of one Raman, who died on 08.02.1999, as against the State of Tamil Nadu. It appears that the said Raman was married twice and hence, the revenue officials refused to issue legal heir certificate exclusively to the plaintiffs. As directed by the defendants / official respondents, the plaintiffs approached the civil Court. The trial Court had held that the materials are not adequate enough to conclude that the plaintiffs are the heirs of the deceased Raman, but also added that the plaintiffs ought to have gone to the 2nd defendant / Tahsildar for obtaining legal heir certificate. Aggrieved by the same, the plaintiffs moved the First Appellate Court in A.S.No.14 of 2022, which endorsed the second of the two reasons of the trial Court, and held that the plaintiffs ought to have gone to the Revenue Officials for obtaining legal heir certificate. Aggrieved by this, the plaintiffs have now approached this Court.



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2. This appeal is now admitted to decide the following Substantial Questions

of Law:

i) *"Whether the Courts below are right in adjudicating that the plaintiffs ought not to have approached the Civil Court, without first approaching the competent revenue authority, for issuance of legal heirship certificate, which is against the provisions of Section 9 of the Code of Civil Procedure, as no law prohibits a Civil Court, from entertaining legal heirship issue ?"*

ii) *"Whether the Courts below are right, in not considering the legal heirship of the deceased, given the documentary evidence, especially, the family card, which is one of the basic evidence to prove the family status of the persons named therein ?"*

iii) *"Whether the Courts below are right in not deciding the issue of legal heirship, when there is no rival claimant to the same, based on the report of the VAO, who is the competent and empowered field level officers, to ascertain the facts such as death, family, occupants, relationship, possession, cultivation, etc., in the deceased's village?"*



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3.Heard both sides.

4.Both the Courts below are under terrible misconception that Civil Court jurisdiction is ousted since the Tahsildar has been vested with the power to grant legal heir certificate. In case of a dispute, it is the Civil Court that has to decide the issue, the legal heir certificate has zero value in deciding the same.

5.In view of the above, this Court finds that there is absolute non application of mind by the First Appellate Court. Hence, the decree of the First Appellate Court is set aside and the matter is remanded back to the First Appellate Court for *de novo* consideration.

6.The parties are required to appear before the First Appellate Court by 03.07.2023. Both sides would be also at a liberty to adduce such evidence as may be relevant for that purpose under Order 41 Rule 27 C.P.C., and if any such materials are produced, the First Appellate Court is required to adhere to the principles governing Order 41 Rule 27 C.P.C., and decide the issue.



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7.This Second Appeal is allowed at the admission stage itself. No Costs.

06.06.2023

Anu

Index : yes / no

Internet : yes / no

Speaking / Non Speaking order

To.

1.The Subordinate Judge, Dharmapuri

2.The District Munsif, Palacode

3.The District Collector,
Dharmapuri District.

4.The Tahsildar,
Palacode, Dharmapuri District.

5.The Village Administrative Officer,
Velahalahalli Village, Palacode Taluk,
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N.SESHASAYEE, J.

Anu

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