



W.A.No.2625 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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Dr. M.A.M.Ramaswamy Chettiar of
Chettinad Charitable Trust,
rep. by its Managing Trustee, Dr.A.C.Muthiah,
"Chettinad House",
Raja Annamalaipuram,
Chennai-600 028.

.. Appellant

Vs

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

2.M.A.M.R.Muthiah

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 13.10.2022 passed in W.P.No.15003 of 2016.

For the Appellant

: Mr.R.Srinivas
Senior Counsel
for M/s.S.Adaikkappan
@ Sithirai Anandam



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For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent No.1

: Mr.M.S.Krishnan
Senior Counsel
for M/s.T.Balaji
for respondent No.2

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

Calling into question the order dated 13.10.2022 passed by the learned Single Judge in W.P.No.15003 of 2016, the unsuccessful writ petitioner - Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust, represented by its Managing Trustee, Dr.A.C.Muthiah, has filed this writ appeal.

2. Mr.R.Srinivas, learned Senior Counsel appearing on behalf of the appellant, highlighting the factual backdrop of the case, would submit that as Dr.M.A.M.Ramaswamy, who hails from Pattinasamy Pirivu of Ilayatrangudi Temple, did not have issue from



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his wedlock with Smt.Sigapi Achi, by deed of adoption dated 9.2.1996, registered as Document No.23 of 1996 in the Office of the Sub Registrar, Karaikudi, they had taken in adoption the second respondent, who was known as Iyyappan, who was the natural son of one RM.Sekkappa Chettiar. The said RM.Sekkappa Chettiar and the second respondent hail from Kazhanivasal Pirivu of Ilayatrangudi Temple. Ever since the said adoption was proposed, there was large scale objection from the members of the Kazhanivasal Pirivu as well as the members of the Pattinasamy Pirivu of Ilayatrangudi Temple. On 1.1.1996, the members of the Kazhanivasal Pirivu took strong objection to the proposed adoption of the second respondent by Dr.M.A.M.Ramaswamy and a resolution recording the said objections was forwarded to Dr.M.A.M.Ramaswamy and RM.Sekkappa Chettiar. Despite such objections raised, Dr.M.A.M.Ramaswamy adopted the second respondent, even though the second respondent was aged beyond 15 years and such adoption was impermissible as per Section 10(iv) of the Hindu Adoptions and Maintenance Act, 1956 [for brevity, "*the Act of 1956*"].



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3. Mr.R.Srinivas, learned Senior Counsel for the appellant, also submitted that the Committee of Pattinasamy Pirivu of Ilayatrangudi Temple passed a resolution on 18.12.2014 to the effect that the adoption of the second respondent was contrary to the custom of the Nattukottai Nagarathar Community and, as a sequitur, the name of the second respondent was resolved to be removed from the Pully Register of Pattinasamy Pirivu of Ilayatrangudi Temple. The said resolution was ratified by the members of Ilayatrangudi Temple by a resolution dated 5.1.2015. Therefore, it is pleaded that the adoption of the second respondent was against the customs prevalent in the community concerned.

4. Mr.R.Srinivas, learned Senior Counsel, brought to the notice of this court that Dr.M.A.M.Ramaswamy, on his own volition, formed a charitable trust under the name and style of Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust vide a deed of declaration of trust dated 9.2.2015 and the same was registered as Document No.51 of 2015 in the office of the Sub



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Registrar, Mylapore. The appellant is one of the first trustees of the said trust. He further pointed out that Dr.M.A.M.Ramaswamy also formed a private trust under the name and style of Dr.M.A.M.Ramaswamy Chettiar Trust by a registered trust deed dated 16.2.2015 registered as document No.61 of 2015 in the office of the Sub Registrar, Mylapore. Dr.M.A.M.Ramaswamy was the sole beneficiary of the said trust during his lifetime. He also inducted trustees, including the affiant herein, as trustee of the said trust on 27.3.2015 and as per Clauses 9(3) and 14 of the said trust deed, all the assets which were available in the private trust at the time of the death of Dr.M.A.M.Ramaswamy shall automatically go to Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust.

5. Learned Senior Counsel for the appellant further submitted that, on 18.2.2015, Dr.M.A.M.Ramaswamy executed his last Will and Testament, which was registered as Document No.15 of 2016 in the office of the Sub Registrar, Mylapore in a sound disposing state of mind bequeathing all his movable and immovable properties that would be available at the time of his death in favour of



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Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust.

During the lifetime of Dr.M.A.M.Ramaswamy, on 30.8.2015, he had made an oral gift of all his movable assets to Dr.M.A.M.Ramaswamy Chettiar Trust and the same was recorded in the minutes of the meeting of the trustees held on 6.11.2015. After the death of Dr.M.A.M.Ramaswamy on 2.12.2015, as per the wish of Dr.M.A.M.Ramaswamy, the last rites were performed by M.A.M.M.Annamalai, the adopted son of Dr.M.A.M.Ramaswamy's brother, late Mr.Kumararajah M.A.M.Muthiah Chettiar. On the death of Dr.M.A.M.Ramaswamy, all the movable and immovable assets left by him became the properties of the appellant trust and the appellant trust is the sole and absolute owner of all the movable and immovable properties of late Dr.M.A.M.Ramaswamy. However, it is alleged that the second respondent claiming himself to be the legal heir of Dr.M.A.M.Ramaswamy with a view to stake an illegal claim to the properties left by Dr.M.A.M.Ramaswamy, applied to the first respondent for legal heirship certificate on 9.12.2015.



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6. Learned Senior Counsel appearing for the appellant argued that immediately on knowing about the application submitted by the second respondent seeking legal heirship certificate, the appellant submitted written objections on 8.2.2016 raising objections that Dr.M.A.M.Ramaswamy has formed Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust on 9.2.2015 and had also executed his last Will and Testament on 18.2.2015 bequeathing all his movable and immovable assets in favour of the charitable trust and that the adoption of the second respondent was invalid and the second respondent was disowned by Dr.M.A.M.Ramaswamy during his lifetime. Based on the aforesaid facts, a request was made by the appellant to the first respondent not to entertain the application of the second respondent and not to grant legal heirship certificate to him. Despite the aforesaid objections raised by the appellant, legal heirship certificate was granted by the first respondent to the second respondent by proceedings dated 10.3.2016. Therefore, the appellant was constrained to file W.P.No.15003 of 2016 before this court to quash the legal heirship certificate dated 10.3.2016 issued in favour of the second respondent by the first respondent.



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7. Mr.R.Srinivas, learned Senior Counsel appearing for the appellant, placed heavy reliance on Section 10(iv) of the Act of 1956 and submitted that Clause (iv) of Section 10 of the Act of 1956 makes it clear that no person shall be capable of being taken in adoption if he is aged above 15 years and, in the present case, admittedly, the second respondent at the time of adoption was aged above 15 years and, therefore, the adoption itself is void and, as a consequence thereof, the first respondent ought not to have granted legal heirship certificate to the second respondent.

8. Nextly, it is contended by learned Senior Counsel appearing for the appellant that the learned Single Judge, overlooking the vital legal aspect that the appellant need not question or challenge the deed of adoption which is void in law, erred in rendering a finding that the appellant, being a stranger to the family, cannot question such document wherein the second respondent has been declared as an adopted son. He pleaded that by dint of the observations made in paragraphs 14 and 15 of the impugned order passed by the



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learned Single Judge, the appellant is unable to go before the competent civil court to challenge the validity of the adoption deed dated 9.2.1996, by which the second respondent was adopted by Dr.M.A.M.Ramaswamy, as the civil court would be heavily influenced by such observations. He, therefore, pleaded that the observations made in paragraphs 14 and 15 of the impugned order passed by the learned Single Judge need to be deleted.

9. Reiterating the argument that any adoption which is void need not be challenged, learned Senior Counsel appearing on behalf of the appellant submitted that a void deed of adoption can be questioned even in collateral proceedings. Taking advantage of the fact that the adopted father had passed away, the second respondent is alienating the movable and immovable properties belonging to the appellant trust and, therefore, the appellant has to work out his legal remedy by moving the competent civil court and, therefore, unless the observations made by the learned Single Judge in paragraphs 14 and 15 are removed or a direction is given to the civil court not to be swayed by the observations made in paragraphs



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14 and 15, the appellant would stand remediless.

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10. Summing up his arguments, learned Senior Counsel appearing for the appellant submitted that the original impugned order passed by the first respondent on 10.3.2016 granting legal heirship certificate in favour of the second respondent may be set aside or alternatively the observations favouring the second respondent made in paragraphs 14 and 15 of the impugned order passed by the learned Single Judge may be deleted.

11. Mr.M.S.Krishnan, learned Senior Counsel appearing on behalf of the second respondent, raising a preliminary objection with regard to the maintainability of the writ petition, argued that if the appellant is indeed aggrieved, he has to prove his locus standi. Being a stranger to the family, the appellant cannot file a writ petition questioning the correctness of the issuance of the legal heirship certificate by the first respondent in favour of the second respondent.



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12. Apropos of the legality of the challenge made by the appellant after almost 25 years from the date of adoption, learned Senior Counsel appearing on behalf of the second respondent referred to Article 57 of the Limitation Act, 1963 [for brevity, "*the Act of 1963*"] and submitted that Article 57 of the Act of 1963 stares in the face of the appellant inasmuch as the adoption deed ought to have been challenged within three years from the date of his knowledge, which he has not done. He further submitted that filing of the writ petition to challenge the legal heirship certificate is nothing but a ruse to get over the legal barrier created by Article 57 of the Act of 1963 and, therefore, order passed by the learned Single Judge does not call for any interference.

13. The next plank of the argument advanced by learned Senior Counsel appearing for the second respondent is that the appellant, being one of the hosts at the adoption ceremony and a member of the reception committee, was inviting guests and, in support of his submission, he has also produced before us the copies of the photographs, wherein the appellant was seen inviting the



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guests participating in the adoption ceremony, where the second respondent was adopted. Drawing our attention to one another photograph, learned Senior Counsel appearing for the appellant highlighted that the appellant has also presented a ring to the second respondent during the adoption ceremony. Therefore, once the appellant is aware of the adoption of the second respondent by Dr.M.A.M.Ramaswamy on 9.2.1996, without challenging the registered adoption deed, the appellant cannot question the validity of the legal heirship certificate issued by the first respondent in favour of the second respondent.

14. Refuting the argument advanced by Mr.R.Srinivas, learned Senior Counsel for the appellant, that no one aged above 15 years can be adopted as per the custom prevalent in the pirivu of both Dr.M.A.M.Ramaswamy and the second respondent, Mr.M.S.Krishnan, learned Senior Counsel appearing for the second respondent, argued that Section 4 read with Section 10(iv) of the Act of 1956 clearly shows that an exception can be carved out and, in the present case, as there has been a custom accepting the adoption of a person aged



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above 15 years, the appellant cannot say that the adoption of the second respondent by Dr.M.A.M.Ramaswamy is void. He, accordingly, prayed for dismissal of the appeal.

15. We find merit in the submissions made by Mr.M.S.Krishnan, learned Senior Counsel appearing on behalf of the second respondent.

16. Before advertng to the question of limitation, it is apposite to refer to Article 57 of the Act of 1963, which is extracted as under:

	<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
57	To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place	Three years	When the alleged adoption becomes known to the plaintiff

17. In the instant case, the deed of adoption of the second respondent was registered on 9.2.1996. The provision quoted supra



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makes it clear that the period of limitation for questioning the adoption is three years from the date of knowledge. But, in the case on hand, the photographs produced by the second respondent would show that the appellant was also present in the adoption ceremony that took place on 9.2.1996. Therefore, when the appellant was abreast of the fact that the second respondent was taken in adoption by Dr.M.A.M.Ramaswamy, he ought to have challenged the adoption on the grounds that the adoptee was aged beyond 15 years and he was hailing from a different pirivu, before the expiry of the period of limitation of three years.

18. Secondly, after 25 years, without even questioning the validity of the adoption, in our considered opinion, the appellant cannot challenge the validity of the legal heirship certificate issued by the first respondent, as the learned Single Judge also in paragraph 14 held that the 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. Therefore, the observation made by the learned Single Judge that a right



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independent has to be established before the competent civil court does not call for interference.

19. Taking support from the judgment of the Karnataka High Court in ***Kadappa Satyappa Terani v. Siddappa Khandappa Terani and others***, ***MANU/KA/4321/2022***, on the question of locus standi of a person challenging the adoption, Mr.M.S.Krishnan, learned Senior Counsel appearing for the second respondent, submitted that except genitive parents, adoptive parents and the adopted son, others have no locus to question the validity of adoption. The relevant portion of the said judgment is extracted hereunder:

*"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***



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T.RAJA, ACJ.
AND
D.BHARATHA CHAKRAVARTHY, J.

(sasi)

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