



W.P.(MD)Nos.20536 and 20537 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.20536 and 20537 of 2022

and

W.M.P(MD).Nos.14873, 14875, 14883,
14884, 19819 and 19946 of 2022

W.P(MD).No.20536 of 2022:

- 1.S.Paulraj
- 2.Margaret
- 3.Joseph
- 4.Siriya Pushparani
- 5.Kulandhai Raj

... Petitioners

Vs.

- 1.The District Registrar (Administration)
Pudukkottai District.

- 2.The Sub-Registrar,
Viralimali,
Pudukkottai District.

- 3.Rev.K.Devaraj
Managing Trustee,
The Good Samaritan Trust,
Nazareth, Kunnathoor Post,
Viralimalai Taluk, Pudukkottai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the



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impugned order passed by the first respondent in Na.Ka.No.202/A2 2022 dated 12.08.2022 and quash the same.

For Petitioner : Mr.C.Vakeeswaran

For Respondents : Mr.N.Satheeskumar (For R1 & R2)
Additional Government Pleader
Mr.S.C.Herold Singh (for R3)

* * * * *

W.P(MD).No.20537 of 2022:

1.C.Soosai Mary
2.F.Nambikkai Mary
3.Mariya Rathinam

... Petitioners

Vs.

1.The District Registrar (Administration)
Pudukkottai District.

2.The Sub-Registrar,
Viralimali,
Pudukkottai District.

3.Rev.K.Devaraj
Managing Trustee,
The Good Samaritan Trust,
Nazareth, Kunnathoor Post,
Viralimalai Taluk, Pudukkottai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in Na.Ka.No.202/A2 2022 dated 12.08.2022 and quash the same.



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For Petitioner : Mr.C.Vakeeswaran
For Respondents : Mr.N.Satheeskumar (For R1 & R2)
Additional Government Pleader
Mr.S.C.Herold Singh (for R3)

* * * * *

COMMON ORDER

Heard the learned counsel on either side.

2. The writ petitioners are class-II legal heirs of one Reverend Mariya Susai. He was ordained as a Catholic Priest way back in the year 1966. He was the part of a Congregation. In the year 1988, he founded the Good Samaritan Trust. He passed away on 27.12.2013. The case of the third respondent is that during his lifetime, Reverend Mariya Susai executed a registered Will in favour of “The Good Samaritan Trust”. The Will, dated 24.12.2013 was registered as Doc.No.5 of 2014 on the file of the Sub-Registrar, Uraiyur.

3. The third respondent would contend that in view of the terms of the Will, the entire property that belonged to Reverend Mariya Susai devolved in favour of the aforesaid Trust and that the Class-II legal heirs would have no claim whatsoever.



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4. The petitioners herein question the validity of the said Will and claim inheritance on the ground that they are biologically and by blood related to the deceased Reverend Mariya Susai and that the Trust cannot be the successor.

5. The petitioners have executed the petition mentioned relinquishment deeds dated 05.03.2020 and 08.11.2021 among themselves and the documents were also duly registered. Questioning such execution and registration, the third respondent lodged a complaint before the first respondent. The first respondent conducted enquiry and passed the impugned order dated 12.08.2022 holding that the execution of the petition mentioned documents by the petitioners shall not be given effect to. The second respondent was directed to enter the same in the relevant Encumbrance Register. Challenging the same, the present writ petitions have been filed.

6. The learned counsel for the writ petitioners reiterated all the contentions set out in the affidavit filed in support of these writ petitions and called upon this Court to quash the impugned order and allow these writ petitions as prayed for.



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7. The learned Additional Government Pleader as well as the learned counsel appearing for the third respondent submitted that the impugned order does not call for interference. It was also urged that the petitioners can avail the appeal remedy.

8. I carefully considered the rival contentions and went through the materials on record.

9. I was initially of the view that since Reverend Mariya Susai became a Roman Catholic Priest and joined a Congregation, he suffered civil death and that therefore, only persons of the Order to which he belonged will be entitled to succeed to his estate. I wondered if the principles of law governing succession of Hindu ascetic/~~rd~~;dpahrp would be applicable to an ordained Christian Roman Catholic Priest also.

10. The learned counsel for the petitioners drew my attention to the decision reported in (2017) 2 ILR(Ker) 912 [*Msgr.Xavier Chullickal (C.R.Xavier) Catholic Priest Vs., C.G.Radhael*], in which, it was held that a Christian Priest on entering the Holy Order would not suffer civil death. Following the decision of the Hon'ble Apex Court reported in



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AIR 1986 SC 1011 [*Mary Roy and others vs., State of Kerala and others*] and 1997 (1) KLT 1 (SC) [*Molly Joseph Vs., George Sebastian*],

the Hon'ble Division Bench of the Kerela High Court held that the statutory provisions of the Indian Succession Act, 1995, will govern the issue.

11. In the case on hand, the third respondent is propounding the Will said to have been executed by the deceased Reverend Mariya Susai. The petitioners question its validity and genuineness. The first respondent could not have gone into this dispute at all. It is seen that the petitioners have also filed O.S.No.30 of 2017 on the file of the II Additional District Court, Trichy, impugning some of the transactions of the third respondent Trust and also challenging the Will, dated 24.05.2013 propounded by the third respondent. When the jurisdictional Civil Court is seized of the issue, the first respondent ought not to have rendered any finding in favour of any of the parties. However, the first respondent was entirely justified in holding that the relinquishment deeds executed among the petitioners shall not be given effect to. This is because the petitioners are yet to establish their rights. Therefore, even while vacating the findings set out in the impugned order, the operative



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portion of the first respondent will hold good. What applies to the petitioners would apply equally to the third respondent also. The third respondent also cannot deal with the property that is the subject matter of the Will till he proves the same in the manner known to law.

12. In other words, the third respondent cannot alienate or encumber the properties that are the subject matter of the Will till the Civil Court pronounces its verdict on the validity of the Will. Since the suit is of the year 2017, the learned trial Judge is directed to dispose of the same on merits and in accordance with law within a period of eight months.

13. Accordingly, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.01.2023

NCC : Yes / No
Index : Yes / No
Rmk



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G.R.SWAMINATHAN,J.

Rmk

To

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