



W.P.(MD)No.20096 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :02.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD).No.20096 of 2015

and

M.P.(MD).No.1 of 2015

V.Kaliammal

... Petitioner

Vs.

1.The Tahsildar,
Sattur Taluk,
Virudhunagar District.

2.G.Ganapathiammal

3.K.Vellaithai

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders passed by the learned Judicial Magistrate No.1 Sattur dated 22.04.2015 passed in CrI.M.P.No.288 of 2015 and consequential order of issuance of the Date of Birth in favour of the third respondent by the first respondent dated 13.05.2015 and quash the same as illegal and consequently direct the first respondent to delete the date of birth entry of the third respondent as 08.03.1971 in the Birth Register maintained by the first respondent.



W.P.(MD)No.20096 of 2015

WEB COPY

For Petitioner :Mr.J.Lawrance1
For Respondents :Mr.D.Farjana Ghoushia
Special Government Pleader for R1

ORDER

The prayer in the writ petition is challenging the order passed by the Judicial Magistrate No.1, Sattur, in Crl.M.P.No.288 of 2015 dated 22.04.2015 and consequently to delete the birth entry and consequently, quash the birth certificate issued by the first respondent in favour of the third respondent.

2. The case of the petitioner is that the third respondent herein had originally filed a suit in O.S.No.29 of 2011 on the file of the District Munsif, Sattur, seeking for a declaration that he is the legal heir of one Vellaichamy and for other reliefs. The learned District Munsif, by a detailed judgment and decree have rejected the claim of the petitioner having found that he is not the legal heir of the said deceased Vellaichamy. The said suit was decreed on 25.08.2014. Learned counsel for the petitioner would further submit that suppressing the judgment and decree, the third



W.P.(MD)No.20096 of 2015

respondent had approached the Judicial Magistrate No.1, Sattur, by filing a Miscellaneous Petition in CrI.M.P.No.288 of 2015 to issue a birth certificate in his name, indicating that the said Vellaichamy is his father and the petitioner is his mother. While filing the application, the third respondent had indicated that along with the said application, an affidavit of the second respondent had been filed, wherein a specific averment has been made that the petitioner was no more. The learned Judicial Magistrate, based upon the said application, without issuing any proper notice, but, simply by relying upon the paper publication issued by the third respondent had directed the issuance of a birth certificate in favour of the third respondent. She would submit that the said birth certificate is contrary to the judgment and decree made by the civil Court in O.S.No.29 of 2011. Further case of the petitioner is that the third respondent was born to the petitioner through her first husband Alagar Samy, whereas, Vellaichamy Goundar is the second husband of the petitioner. Hence, she would submit that the order impugned in this writ petition will have to be set aside.



W.P.(MD)No.20096 of 2015

3. The learned counsel appearing for the third respondent would submit that since the third respondent had married against the wishes of her parents, namely, the petitioner and her husband. The petitioner is trying to throw out all attempts of the third respondent to obtain a birth certificate. He would further submit that the application of the petitioner was supported by an affidavit filed by the second respondent, who is the sister of the petitioner. He would further submit that only after due enquiry, the learned Judicial Magistrate had passed the order impugned in this writ petition.

4. Learned Special Government Pleader, on instructions, would submit that the third respondent is the child of the petitioner and one Alagarsamy, who was the first husband of the petitioner. Further, as per the enquiry made in the said village, it was found that the actual date of birth of the third respondent is 10.02.1970 and not 08.03.1971 as claimed by the third respondent.

5. I have heard the rival submissions made on either side.



W.P.(MD)No.20096 of 2015

WEB COPY

6. Originally, a suit seems to have been filed by the third respondent seeking for various reliefs including a declaration to declare that she is the legal heir of one Vellaichamy Gounder and after full-fledged trial had been dismissed on 25.08.2014. During the trial, the trial Court had framed the issue as to whether the third respondent was the daughter of one Vellaichamy Gounder as claimed by her. While dealing with the said issue, the competent civil Court had given a specific finding that the petitioner was not born to Vellaichamy Gounder, but, was born to Alagar Samy. The said findings of the civil Court have not been challenged by the third respondent. However, after dismissal of the suit, the third respondent has moved the Judicial Magistrate No.1, Sattur, seeking for a birth certificate indicating that she was born on 08.03.1971 to the petitioner as well as the Vellaichamy Gounder. Having suffered a judgment and decree, on the contrary, without seeking to file any appeal against the same, she had approached the Judicial Magistrate No.1, Sattur seeking for such a birth certificate. It is trite law that the finding in a civil proceedings are binding upon the criminal Court as this judgment and decree brought to the notice of the learned Judicial Magistrate No.1, and he would not have issued with the



W.P.(MD)No.20096 of 2015

WEB COPY

certificate. The third respondent in connivance with the second respondent had misled the Judicial Magistrate No.1, Sattur and had obtained an order declaring herself to be born on 08.09.1971 to Vellaichamy Gounder and the petitioner. Unfortunately, the third respondent also seems to have declared her mother to be dead, while approaching the learned Judicial Magistrate No.1, Sattur. Hence, without hesitating any further, the order made by the learned Judicial Magistrate No.1, Sattur, in CrI.MP.No.288 of 2015 dated 22.04.2015 is set aside and consequently, direct the first respondent to delete the Registration bearing registration No.7 of 2015, dated 13.05.2015 from the Register of Birth and Death maintained by it.

7. In fine, the writ petition is allowed and the impugned order passed by the Learned Judicial Magistrate No.1, Sattur, in CrI.M.P.No.288 of 2015 is set aside and the direction to the first respondent to delete the entry of the registration bearing Registration No.7 of 2015, dated 13.05.2015 is set aside and the first respondent is directed to delete the entry in the registration bearing Registration No.17 of 2015, dated 13.05.2015. Such direction shall be complied with within a period of three weeks from



W.P.(MD)No.20096 of 2015

the date of receipt of a copy of this order. There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

02.03.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No

sbn

To

The Tahsildar,
Sattur Taluk,
Virudhunagar District.



WEB COPY



W.P.(MD)No.20096 of 2015

K.KUMARESH BABU, J.

sbn

W.P.(MD).No.20096 of 2015
and
M.P.(MD).No.1 of 2015

02.03.2023