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W.P. No.1386 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2024

CORAM:

THE HON'BLE MR. JUSTICE G.K. ILANTHIRAIYAN

W.P. No.1386 of 2021 and
W.M.P.Nos.1556 & 1558 of 2021

V.Sakthivel

.... Petitioner

VS.

1. The Revenue Divisional Officer,
CSI Institution Campus,
Chidambaram Colony,
Erode-638 001.

2. The Tahsildar,
Muthur Road,
Modakurichi-638 104.

3. V.Eswaramoorthy

4. Rajeshwari

5. Saroja

6. Prema

7. Kathirvel

8. Uma Maheshwari

.... Respondents



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Prayer : Writ Petition is filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the impugned order vide Moo.Mu.5281/2020/A3 dated 31.12.2020 issued by the first respondent and quash the same and consequently direct the 2nd respondent to issue the certificate that was previously issued and declare the petitioner and 3rd, 4th and 4th respondents are the legal heirs.

For Petitioner : Mr.Naveen Kumar Murthi

For Respondents 1 & 2 : Mr.S.J.Mohammed Sathik
Government Advocate

For Respondents 3 to 5 : No appearance

For Respondents 6 to 8 : Mr.D.Selvaraju

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 31.12.2020 thereby cancelled the relationship certificate issued by the second respondent and remitted back for fresh enquiry.

2. The petitioner's grandfather Late.Sengota Gounder had three children namely, Ramasamy, Varanavasi and Lakshmi. The petitioner is the son of the said Varanavasi. The Ramasamy had married one



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Sivakami. They had no children and adopted a child namely Kottravel Sethupathi in the year 1999. The said Ramasamy and his wife died leaving behind their sole legal heir i.e., Kottravel Sethupathi. Thereafter, the said Kottravel Sethupathi also died on 06.09.2020, leaving behind no legal heirs of the first class as per the Hindu Succession Act, 1956. The said Kottravel Sethupathi had two biological sisters and one brother. However, upon adoption of the said Kottravel Sethupathi by Mr.Ramasamy, ties with his biological family have been legally severed and therefore, by operation of law, no person from the biological family of Kottravel Sethupathi could have any connection or claim over any of the properties of Kottravel Sethupathi which devolved upon him in the adoptive family. The said Ramasamy had one brother and one sister namely Varanavasi and Lakshiammal. The said Varanavasi had two sons and the said Lakshmiammal had two daughters who are class II legal heirs of the deceased Ramasamy as per Hindu Succession Act, 1956. Therefore, they had applied for legal heirship certificate before the 2nd respondent. After due enquiry, the second respondent issued legal heirship certificate on 19.11.2020 in favour of the petitioner and respondents 3 to 5 herein. Aggrieved by the same, the respondents 6 to 8 preferred an appeal before the 1st respondent. The first respondent by an order dated



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31.12.2020 set aside the legal heir ship certificate issued by the second respondent and further directed the second respondent for fresh disposal after conducting due enquiry.

3. On perusal of the impugned order dated 31.12.2020 revealed that the first respondent recorded about the adoption of Kottravel Sethupathi at the age of 1 1/2 years by Ramasamy and his wife Sivakami in the year 1999 and adoption deed was registered vide document No.1021 of 1999 and as such after the demise of adopted son his siblings are included as legal heirs in the legal heirship certificate. Therefore, the legal heir ship certificate issued by the second respondent was set aside.

4. The learned counsel for the petitioner rightly pointed out that in accordance with Section 12 of the Hindu Adoptions and Maintenance Act, 1956, on the date on which the adoption is made, all the ties of the child in the family of his or her birth shall be deemed to have been severed and replaced by those created by the adoption in the adoptive family. It is relevant to extract the provision under section 12 of the Hindu Adoptions and Maintenance Act, 1956 :



"12. An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that :-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

Thus, it is made clear that on the date of adoption the ties of the adoptive child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.



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5. Though, the adoptive child namely Kottravel Sethupathi as his siblings after adoption, the birth of Kottravel Sethupathi has deemed to be severed and replaced by those created by the adoption in the adoptive family. Once the said Kottravel Sethupathi had become the son of the Ramasamy and Sivakami, his birth shall be deemed to have been severed. The learned counsel for the petitioner also relied upon the Judgement in the case of ***M.G.Mamtha Vs. C.Soundarya*** reported in ***2018 SCC online Mad 380***. The relevant portion of the said order is extracted hereunder:

"13. Perusal of the above said provision of law as well as the decision of the Apex Court, as discussed supra would show without any ambiguity that an adopted child, from the date of the legal adoption, becomes the child of adoptive father or mother for all purposes since such child severed his or her ties in the family of his or her birth from the said day onwards. Consequently, all the ties of the child are replaced in the adoptive family created by adoption. Though such adopted child, in the adoptive family, is not the child by biological creation, however, it should be born in mind that such adopted child is the child of the adoptive family be legal creation, which status certainly confers on such child all such rights as a biological child in the adoptive family. Once such right is conferred under law, the said child is to be considered, treated, looked into, given the status as the child of the adoptive family,



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as the prefix "adopted" is bound to vanish or at least lose its significance any more for any purpose from the day of adoption."

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Thus, it is clear that the adoptive child is construed to be a member of the adopted family, all the ties of the child are replaced in the adoptive family created by adoption.

6. Therefore, the order passed by the first respondent is in contravention of Section 12 of Hindu Adoptions and Maintenance Act, 1956 and the order passed by the first respondent dated 31.12.2020 is liable to be set aside. Therefore, the order passed by the first respondent dated 31.12.2020 is quashed. Hence, this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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G.K. ILANTHIRAIYAN, J.

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To

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2. The Tahsildar,
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