



WEB COPY



W.P.No.14333 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.14333 of 2023

R.Philomina

... Petitioner

Vs.

1. The Branch Manager,
Tamil Nadu State Apex Co- Operative Bank Ltd,
Periyamedu,
No.34, Vepery High Road,
Chennai- 600 007.

2. The Managing Director,
Tamil Nadu State Apex Co- Operative Bank Ltd,
No.4, NSC Bose Road, Chennai-600 001.

3. A.Ruby

4. S.Prashanth

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the 1st respondent to consider the petitioner's representation dated 28.09.2022 and 29.03.2023 and permit the Petitioner to withdraw and provide the fair share in the amount deposited by the Petitioner's elder son Swaminathan in 1st Respondent Bank.



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For Petitioner : Mr.M.Balakrishnan
For Respondents : Mr.S.Usha Rani (for R1 & R2);
Mr.M.V.Vijaya Bhaskar (for R3);
Ms.S.Saranya (for R4).

ORDER

The writ of mandamus has been instituted to direct the 1st respondent to consider the petitioner's representation dated 28.09.2022 and 29.03.2023 and permit the Petitioner to withdraw and provide the fair share in the amount deposited by the Petitioner's elder son Swaminathan in 1st Respondent Bank.

2. The petitioner states that her family is professing Christianity which is not disputed by respondents 3 and 4. The elder son of the petitioner, i.e., Swaminathan died intestate, leaving behind the petitioner mother and his children, respondents 3 and 4. The petitioner states that her elder son deceased Swaminathan had taken care of her medical expenses. He was working as Additional Director in the Cooperative Department. After his death the petitioner submitted an application for withdrawal of



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money from the first respondent Bank. Since the Bank refused to settle the amount, the present writ petition came to be instituted.

3. The learned counsel appearing on behalf of the respondents 3 and 4 would object by stating that it is not in dispute that the family of the petitioner is professing Christianity and they are governed under the Indian Succession Act, 1925. Under Section 33 and 37 of the Indian Succession Act, 1925, the petitioner/mother of the deceased Swaminathan is not eligible to claim share. Under section 37 of the Act, the children of the deceased Swaminathan alone are entitled to claim equal share and therefore, the writ petition is to be rejected.

4. The issues regarding claiming of share in respect of the family professing Christianity under Indian Succession Act, 1925, has been considered by this Court in A.S. No.596 of 2019 dated 7.11.2023. The relevant paragraphs are as under:

“7.Since the respondent mother was not represented by a counsel and considering the importance of the question of law, we had requested Ms.B.S.Mitra Neshaa, learned counsel to assist us and appointed her as Amicus Curiae. The learned Amicus has placed a brief note before us detailing the position of law under the Indian Succession Act. Sections 33 and 33~A



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deal with succession to the estate where the intestate has left a widow and a lineal descendant or a widow and kindred or the widow only.

8.As per the rules under Section 33 & 33~A where the Christian dies intestate leaving behind a widow and lineal descendants 1/3rd of the property would go to the widow and remaining 2/3rd will go to the lineal descendants. If an intestate dies leaving behind a widow and a kindred 1/3rd of the property will be taken by the widow and the remaining will go the kindred. If there is neither lineal descendants nor kindred, the entire property will go to the widow. Section 33~A provides for certain rules regarding succession and we do not see any situation where provisions of 33~A would apply in this case.

9.Section 43 of the Indian Succession Act deals with Distribution of Assets when there are no lineal descendants and a widow. Section 42 makes the father a heir and Section 43 provides that if the father is not alive on the date of the death of the intestate, his mother and brothers and sisters would be heirs. The provisions of Sections 41 to 45 of the Indian Succession Act would apply only when the heirs mentioned in Section 33 namely, the widow and lineal descendants are not available.

10.In the case on hand, there is no question of the mother of the intestate getting a share as a heir of the intestate. Therefore, the entire judgment of the learned District Judge is flawed as the learned Judge had overlooked the fact that it is



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Indian Succession that would apply to the parties, and under the said act, a mother of an intestate does not become the heir unless there is a failure on other heirs namely, widow, the lineal descendant, kindred or father.

*11.It will be useful to refer to the judgment of this Court in **Rashmi Pithavadian Vs. Edith Pithavadian** reported in **2021 SCC Online Mad 5468** wherein, the Hon-ble Mr.Justice V.Parthiban considered the similar question and has concluded that since a mother is not a heir, she cannot maintain a suit for declaration that the settlement deed executed by her deceased son in favour of his daughter is invalid. The learned Judge after adverting to the provisions concluded that the mother has no right over the property and hence, she has no cause of action to question the settlement deed. Even in the absence of the settlement deed or the Will, the property would go to the only daughter as a lineal descendant.”*

5. In the present case, the Legal Heir Certificate, generally issued by the Tahsildar, cannot be acted upon since the parties are governed under the provisions of the Indian Succession Act, 1925. Thus, the writ petitioner is not entitled for a share from and out of the properties belong to the deceased Swaminathan but the respondents 3 & 4 are entitled to have equal share of Swaminathan's property.



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6. Thus, the respondents 1 and 2 are directed to settle the money lying in the Bank equally in favour of the respondents 3 and 4.

7. With these directions, the writ petition stands disposed of.

However, there shall be no order as to costs.

08.04.2024

Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)



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S.M.SUBRAMANIAM. J.,

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