



W.P.(MD)No.2340 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.03.2024

Pronounced on : 27.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.2340 of 2021

S.Asuntha Jasmine

... Petitioner

Vs.

1. The District Collector,
Sivaganga.

2. The Revenue Divisional Officer,
Delvakkottai.

3. The Tahsildar,
Karaikudi.

4. Jebamalai

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the third respondent dated 20.07.2020 in ஐ.மு.அ2/2190/2020 and quash the same as un-constitutional and illegal and consequently directing the third



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respondent herein to issue a fresh legal heirship certificate showing the petitioner and her children alone as the legal heirs of the deceased Paulraj.

For Petitioner : Mr.R.Sundar Srinivasan

For R1 to R3 : Mr.S.R.A.Ramachandran
Additional Government Pleader

ORDER

The Writ Petition is directed against the impugned proceedings dated 20.07.2020 passed by the third respondent and for direction to issue a fresh legal heir certificate showing the writ petitioner and her children alone as the legal heirs of the deceased Paulraj.

2. It is not in dispute that the parties are Christians, that the marriage between the writ petitioner and one Paulraj was solemnized as per law applicable to the Christians and that due to their wedlock, they were blessed with a daughter Maria Dhivya and a son Santi Deeban. It is also not in dispute that the fourth respondent Jebamalai is the mother of the said Paulraj. It is also not in dispute that the said Paulraj died on 01.08.2019.



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3. The case of the writ petitioner is that the writ petitioner has applied for legal heir certificate through online, that she has also submitted a representation dated 05.02.2020 for issuance of legal heir certificate in her name and in the name of her two children, that the third respondent has issued a legal heir certificate dated 13.02.2020, wherein, the fourth respondent-mother of the deceased has also been shown as a legal heir and that the writ petitioner has again submitted a representation dated 02.03.2020 extracting Section 33 of the Indian Succession Act and requesting for deletion of the name of the fourth respondent in the legal heir certificate, but the third respondent sent the impugned proceedings dated 20.07.2020 stating that as per Section 45 of the Indian Succession Act, mother is also a legal heir and hence refused to delete the name of the fourth respondent. Aggrieved by the impugned proceedings dated 20.07.2020, the present writ petition came to be filed.

4. The learned Additional Government Pleader appearing for the respondents 1 to 3 would reiterate the contentions raised in the counter statement, wherein, it has been stated that as per Section 45 of the Indian Succession Act, the fourth respondent being a mother of the deceased has



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become Class I legal heir and as such, she is entitled to be the legal heir of her deceased son Paulraj, that the Additional Chief Secretary/ Commissioner of Revenue Administration has issued a circular dated 24.09.2019 giving instructions relating to the issuance of legal heir certificate, that as per the instructions, the writ petitioner can prefer an appeal before the second respondent within one year from the date of issuance of the certificate and can also prefer a revision before the first respondent, that since the writ petitioner is disputing that the fourth respondent is not a legal heir, the said disputed question cannot be decided by the revenue authorities and the writ petitioner has to approach the civil Court seeking suitable relief and that therefore there is no illegality or infirmity in the order passed by the third respondent.

5. The learned counsel appearing for the writ petitioner has mainly relied on Section 33 of the Indian Succession Act and as such, the same is extracted hereunder for better appreciation;

*“33. Where intestate has left widow and lineal descendants,
or widow and kindred only, or widow and no kindred.—
Where the intestate has left a widow—
(a) if he has also left any lineal descendants,*



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one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;

(b) [save as provided by section 33A], if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;

(c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.”

6. Since the third respondent for rejecting the claim of the writ petitioner has relied on Section 45 of the Indian Succession Act and the same is also extracted hereunder;

“45. Where intestate’s father dead and his mother and children of any deceased brother or sister living.—If the intestate’s father is dead, but the intestate’s mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the



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property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death."

7. Section 33 of the Indian Succession Act contemplates that where a person dies intestate leaving behind a widow and lineal descendants, one-third of the property shall belong to his widow and the remaining two-third of the property shall go to his lineal descendants and in case, if that person dies leaving behind a widow but no lineal descendants but a kindred, one-third of the property shall belong to his widow and the remaining two-third of the property shall go to the kindred and that in case, if that person dies without lineal descendants or kindred, then the entire property shall belong to his widow.

8. Section 41 of the Indian Succession Act deals with Rules of distribution where intestate has left no lineal descendants, which says that where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those in Sections 42 to 48. As per Section 42 of the



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Indian Succession Act, if the intestate's father is living, then he shall succeed to the property. Section 43 of the Indian Succession Act contemplates that if the intestate's father is dead, but the intestate's mother is living and there are also brothers and sisters of the intestate living and there is no child living of any deceased brother and sister, the mother and each living brother and sister shall succeed to the property in equal shares. Section 45 of the Indian Succession Act deals with a case where intestate's father is dead and his mother and children of any deceased brother or sister are living. It is pertinent to note that the provisions of Section 41 to 45 would apply only when the heirs mentioned in Section 33 are not available. In the case on hand, as already pointed out, wife and children of the deceased are very much available at the time of death of the said Paulraj.

9. In the case of ***Rashmi Pithavadian Vs. Edith Pithavadian*** reported in ***2021 SCC Online Mad 5468***, a learned Judge of this Court, while considering a similar question, 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 and



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even in the absence of the settlement deed or the Will, the property would go to the only daughter as a lineal descendant.

10. The learned counsel appearing for the writ petitioner has relied on the judgment of the Hon'ble Division Bench of this Court in ***A.S.No. 596 of 2019 (Agnes @ Karpaga Devi and another Vs. Pauline @ Pauline Iruthaya Mary) dated 07.11.2023***, wherein, a mother has claimed the properties belonged to her son, who died intestate and who has also left his widow, the trial Court has come to a finding that the plaintiff being the mother and the first defendant being the widow are entitled to get equal share of the properties and on that basis passed a preliminary decree and when the same was challenged before the Hon'ble Division Bench of this Court, by referring to Sections 33 and 33-A of the Indian Succession Act and also taking note of Sections 43 to 45, has specifically held that there is no question of the mother of the intestate getting a share as a heir of the intestate and that the learned trial Judge had overlooked the matter that it is Succession Act 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.



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11. Considering the above provisions of the Indian Succession Act and also taking note of the decisions above referred, this Court has no hesitation to hold that the fourth respondent, in the presence of the wife and the children of the deceased Paulraj, cannot be considered as a legal heir and as such, the impugned order cannot legally be sustained.

12. When the matter was taken up for final disposal on 20.03.2024, the learned counsel appearing for the writ petitioner has filed a Memo dated 20.03.2024 stating that the fourth respondent has passed away on 16.01.2023 pending the present writ petition and that since she is not the legal heir of the deceased son, there is no need or necessity to implead any legal heir for the deceased fourth respondent. In view of the decision arrived at, the above said Memo dated 20.03.2024 is hereby recorded. Consequently, this Court concludes that the impugned order is liable to be set aside.

13. In the result, this Writ Petition is allowed and the impugned proceedings dated 20.07.2020 passed by the third respondent in ஓ.மு.அ2/2190/2020 is hereby set aside. The third respondent is directed to issue a



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fresh legal heir certificate showing the writ petitioner and her children alone as the legal heirs of the deceased Paulraj. No costs.

27.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Collector,
Sivaganga.
2. The Revenue Divisional Officer,
Delvakkottai.
3. The Tahsildar,
Karaikudi.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**Pre-Delivery Order made in
W.P.(MD)No.2340 of 2021**

Dated : 27.03.2024