



W.P(MD)No.18213 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18213 of 2023

and

W.M.P.(MD)No.15192 of 2023

D.Sudha

... Petitioner

Vs.

1.The Tahsildar,
Vadipatty Taluk,
Madurai District.

2.D.Ponnalagu

3.D.Barathraj

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned online communication order bearing No. Nil dated 21.06.2023 on the file of the 1st Respondent and quash the same as illegal and consequently direct the 1st respondent to issue the legal heir certificate to the petitioner on the basis of her application in TN-720230612857 dated 12.06.2023.



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For Petitioner : Mr.R.Shnakar Ganesh

For Respondents : Mr.S.Kameshwaran,
Government Advocate for R1.
Mr.M.Suresh for R2 & R3.

ORDER

Heard both sides.

2.The petitioner got married to one Dhanasekaran on 13.06.1994. Through the said wedlock, a male child was born on 12.06.1995. The marital relationship broke down and they separated in the year 1999. Thereafter, the second respondent got married to Dhanasekaran. The third respondent was born through the said wedlock. Dhanasekaran passed away on 01.12.2022. The petitioner applied for issuance of legal heir certificate. The Tahsildar, Vadipatty took the stand that since Dhanasekaran was twice married, the legal heir certificate cannot be issued.

3.The stand of the respondents 2 and 3 is that since the petitioner left the matrimonial home and had been residing separately ever since, she cannot claim the status of the legal heir.



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4.I carefully considered the contentions advanced on either side. The fact remains that the petitioner and Dhanasekarn were married as per Hindu rites and customs. It is true that they separated in the year 1999. In fact, the learned counsel for the respondents 2 and 3 produced copy of the agreement dated 05.06.1999. But this Court cannot take cognizance of such an agreement. A marriage validly solemnized as per Hindu rites and customs will have to be dissolved only as per the provisions of Hindu Marriage Act, 1955. Of course, customary divorce is recognized in certain communities. There is nothing on record to show that the parties herein belong to such a community. In any event, the burden of proving that such a custom exists will be on the respondents 2 and 3. As on date, the said burden has not been discharged. I, therefore, hold that the marital tie between Sudha and Dhanasekaran had not snapped in law though it might have snapped for all practical purposes. Though the second respondent / Ponalagu cannot be conferred the legal status of wife, the child / third respondent born through the said wedlock between Dhanasekarn and Ponalagu cannot be denied the status of legal heir.

5.I, therefore, direct the first respondent to issue legal heir certificate indicating the petitioner, Nishvanth and Bharathraj as the legal heirs of the deceased Dhanasekarn.



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6.This writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

The Tahsildar,
Vadipatty Taluk,
Madurai District.



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G.R.SWAMINATHAN, J.

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