



W.P.(MD)No.20424 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.06.2024

Pronounced on : 18.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.20424 of 2021

and

W.M.P.(MD)No.17068 of 2021

R.Elamathi

... Petitioner

Vs.

1. The Revenue Divisional Officer,
Nagercoil.

2. The Tahsildar,
Agasteeswaram Taluk,
Collectorate Campus,
Nagercoil.

3. Rajini

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the online order of the second respondent and subsequent order passed by the first respondent vide dated 08.09.2021 and quash the same and consequently directing the respondents 1 and 2 to issue Legal Heirs Certificate to the husband of the petitioner A.Jayakumar.



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For Petitioner : Mr.G.Aravinthan
For R1 & R2 : Mr.A.K.Manikkam
Additional Government Pleader
For R3 : Mr.G.Anto Prince

ORDER

The Writ Petition is directed against the order dated 08.09.2021 passed by the first respondent, confirming the rejection order passed by the second respondent.

2. The writ petitioner's case is that the writ petitioner got married with one A.Jayakumar, S/o.Ayyapazham on 05.09.2005 and out of their wedlock, a male child by name J.E.Manikandabarathi was born on 27.10.2009 and a female child by name J.E.Anudharshini was born on 03.06.2011, that the said Jayakumar was working as a police constable Grade-I in Tamil Nadu Police Department and lastly served at Kanyakumari Police Station, that the said Jayakumar met with an accident on 06.05.2021 and he was immediately admitted in Muthu Neuro Centre in Nagercoil and subsequently he was admitted in Kanyakumari District Medical College Hospital, Nagercoil on 19.05.2021, that despite



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treatment, he succumbed to the injuries on 21.05.2021, that before the marriage of the writ petitioner and the said Jayakumar, a marriage agreement was registered between the said Jayakumar and the third respondent by coercion and threat, that the said Jayakumar has filed a suit in O.S.No.667 of 2001 on the file of the Principal District Munsif Court, Nagercoil challenging the said marriage agreement, that the said suit in O.S.No.667 of 2001 was dismissed vide judgment and decree dated 12.01.2007, that the said Jayakumar has preferred an appeal in A.S.No.26 of 2007 on the file of the Principal Subordinate Court, Nagercoil and the said appeal was dismissed for default on 05.11.2007, that the third respondent in the meanwhile filed a maintenance case in M.C.No.4 of 2007 under Section 125 of the Code of Criminal Procedure before the Chief Judicial Magistrate Court, Nagercoil and that the said maintenance case was dismissed vide order dated 13.06.2007 and from the dismissal of the maintenance case, it has become crystal clear that the third respondent is not the wife of the said Jayakumar.

3. It is the further case of the writ petitioner that after the death of the said Jayakumar, the writ petitioner applied for legal heirship certificate



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before the second respondent on 07.06.2021, that the same was rejected on the ground that the said Jayakumar has two wives, that the writ petitioner has then preferred an appeal before the first respondent on 31.08.2021 requesting to issue legal heirship certificate to the said Jayakumar, that the first respondent has not conducted any enquiry independently nor offered any opportunity to the writ petitioner to put forth her case, that the first respondent has simply passed the impugned order dated 08.09.2021 reiterating the order passed by the second respondent directing the writ petitioner to approach the Court to get legal heirship certificate for her husband on the basis of the circular issued by the Commissioner of Revenue Administration vide Circular No.11/2017 dated 09.08.2017 and that therefore the writ petitioner with no other option has approached this Court.

4. The second respondent has filed a counter affidavit stating that the said Jayakumar had previously married the third respondent through a registered marriage agreement, that the validity of the said marriage agreement was challenged by the said Jayakumar before the Principal District Munsif Court, Nagercoil in O.S.No.667 of 2001 and the same was



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dismissed vide judgment and decree dated 12.01.2007, that the said Jayakumar preferred an appeal in A.S.No.26 of 2007 before the Subordinate Court, Nagercoil and the appeal was also dismissed as there was no representation on both the sides, that the third respondent has filed a petition for maintenance in M.C.No.4 of 2007 before the Chief Judicial Magistrate Court, Nagercoil, Kanyakumari District seeking maintenance of Rs.4,000/- per month but the same was dismissed on 13.06.2007, that the findings of the learned Chief Judicial Magistrate in M.C.No.4 of 2007 did not affect the said registered marriage agreement and hence, the validity of the said marriage agreement stands undisputed which implies that the writ petitioner could only be considered as a second wife of the said Jayakumar, that in furtherance to the circular issued by the Commissioner of Revenue Administration in Circular No.11/2017, it can be unambiguously inferred that legal heirship certificate shall not be issued to the applicant if more than one wife/husband exists for the deceased, that the above petition has been filed with ulterior motive and for the reasons best known to her and that since the petition is tainted with *mala fide* and was filed abusing the process of Court, the same is liable to be dismissed.



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5. It is not in dispute that one Jayakumar was working as a police constable Grade-I in Tamil Nadu Police Department, that while he was riding a two wheeler in Palkulam main road, met with an accident on 06.05.2021 and that despite treatment, he succumbed to the injuries on 21.05.2021. The writ petitioner as well as the third respondent claiming to be the legally wedded wife of the said Jayakumar has been claiming the legal heirship certificate. The writ petitioner has sought for legal heirship certificate of her husband Jayakumar by including her husband's mother A.Thangam, herself as wife, J.E.Manikandabarathi as son and J.E.Anudharshini as daughter. The second respondent, after the receipt of the application from the writ petitioner, has rejected the same on the ground that the deceased was having two wives and advised her to approach the Court. It is not in dispute that the writ petitioner, aggrieved by the order passed by the second respondent, has preferred an appeal before the first respondent and the first respondent, relying on the Circular No.11/2017 dated 09.08.2017 issued by the Commissioner of Revenue Administration that legal heirship certificate shall not be issued to the applicant if more than one wife/husband exists for the deceased, directed



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the writ petitioner to approach the competent Court. Aggrieved by the impugned order, the present writ petition came to be filed.

6. It is evident from the records that the said Jayakumar has filed a civil suit in O.S.No.667 of 2001 against the third respondent claiming the relief of declaration that the registered marriage agreement dated 28.09.2001 obtained from the plaintiff Jayakumar by coercion and threat is legally invalid and that after full trial, the suit in O.S.No.667 of 2001 was dismissed vide judgment and decree dated 12.01.2007.

7. It is evident from the judgment passed in O.S.No.667 of 2001 filed by the said Jayakumar that the trial Court has framed issues whether the marriage agreement dated 28.09.2001 was obtained from the plaintiff Jayakumar by coercion and was valid and the other issue is, is it correct to say that there was no proper marriage between the plaintiff Jayakumar and the defendant/third respondent herein. The trial Court, after considering the evidence elaborately, has given a finding that the marriage between the plaintiff Jayakumar and the defendant/third respondent herein was proved and that the marriage agreement dated 28.09.2001 was not obtained from



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the plaintiff Jayakumar by coercion or by threatening and on that basis, dismissed the suit.

8. As already pointed out, the said Jayakumar has preferred an appeal in A.S.No.26 of 2007 on the file of the Principal Subordinate Court, Nagercoil and the appeal was dismissed on 05.11.2007 as there was no representation on both the sides. It is not the case of the writ petitioner that the said Jayakumar or the writ petitioner after the death of her husband Jayakumar has taken any steps to restore the appeal which was dismissed.

9. As rightly contended by the learned counsel appearing for the third respondent and the learned Special Government Pleader appearing for the respondents 1 and 2, since the appeal was dismissed, the judgment and decree of the trial Court had attained finality and more importantly the finding of the trial Court with regard to the marriage between the said Jayakumar and the third respondent and the validity of the marriage agreement dated 28.09.2001.



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10. The main contention of the writ petitioner is that the third respondent has laid a maintenance claim in M.C.No.4 of 2007 on the file of the Court of Chief Judicial Magistrate, Nagercoil and after full trial, the maintenance case was ordered to be dismissed vide order dated 13.06.2007. No doubt, as rightly pointed out by the learned counsel appearing for the writ petitioner, the learned Chief Judicial Magistrate in the order passed in M.C.No.4 of 2007 has given a finding that the marriage between the said Jayakumar and the third respondent herein was not proved. As rightly contended by the learned counsel appearing for the third respondent, while considering the maintenance claim under Section 125 Cr.P.C., the Court is not expected to go into the validity of the marriage between the parties and even if any finding is given, that will not bind on the civil Court and the said finding will only be subject to the finding to be given by the competent civil Court.

11. In the case on hand, as already pointed out, the competent civil Court after full trial has decided that the marriage between the said Jayakumar and the third respondent herein was proved and the marriage agreement was not obtained from the said Jayakumar by coercion or by



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threatening and as such, the said findings are definitely binding on the Court deciding the claim under Section 125 Cr.P.C.

12. Section 127(2) Cr.P.C. contemplates that in consequence of any decision of a competent Civil Court, any order made under Section 125 should be cancelled or varied. Hence, the above provision also makes it clear that the decision of a competent civil Court is binding on the Magistrate while deciding the maintenance claim.

13. On a perusal of the order passed in M.C.No.4 of 2007, this Court has no hesitation to hold that the learned Chief Judicial Magistrate has exceeded his jurisdiction and has given findings against the findings recorded by the competent civil Court.

14. As rightly contended by the learned counsel appearing for the third respondent, the official respondents 1 and 2, in their counter affidavit, have taken a specific stand that they have preferred the judgment of the competent civil Court rather than the findings of the learned Chief Judicial Magistrate and according to them, the writ petitioner could only be considered as a second wife of the said Jayakumar.



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15. No doubt, since the marriage between the third respondent and the said Jayakumar is subsisting, the writ petitioner could only be considered as the second wife of the said Jayakumar.

16. As already pointed out, the respondents 1 and 2, by referring to the circular issued by the Commissioner of Revenue Administration that legal heirship certificate cannot be issued to the applicant if more than one wife/husband exists for the deceased, have directed the writ petitioner to approach the Court. But the writ petitioner, in the appeal filed before the first respondent, has pleaded everything mainly with regard to the civil proceedings and maintenance proceedings between her husband Jayakumar and the third respondent. Since the competent civil Court has already decided the matter, the order of the respondents 1 and 2 directing the writ petitioner to approach the Court again cannot be sustained. But at the same time, the contention of the respondents 1 and 2 that the writ petitioner is not entitled to the relief claimed cannot be found fault with.

17. It is not in dispute that the writ petitioner and the said Jayakumar had two children. As already pointed out, since the writ



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petitioner could only be considered as a second wife, she cannot be added as a legal heir but at the same time, her children and mother of the said Jayakumar, if alive have to be included. Considering the above, this Court is of the view that the first respondent has to be directed to conduct an enquiry and issue legal heirship certificate in the light of the observations made in this order.

18. In the result, this Writ Petition is dismissed. The first respondent is directed to conduct an enquiry and issue legal heirship certificate in the light of the observations made in this order. Consequently, connected Miscellaneous Petition is closed. No costs.

18.07.2024

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

To

1. The Revenue Divisional Officer,
Nagercoil.
2. The Tahsildar,
Agasteeswaram Taluk,
Collectorate Campus,
Nagercoil.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
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and
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Dated : 18.07.2024