BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	26.06.2024
Pronounced on	25.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.26566 of 2023

J.Deepa
W/o.Late Jayaprabhu ... Petitioner

Vs.

1.The Regional Transport Officer,
Regional Transport Office,
Karaikudi,
Sivagangai District.

2.N.Aasirvatham ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the first respondent to transfer the RC Book to the name of the petitioner by considering the petitioner's representation dated 01.08.2023.

For Petitioner : Mr.S.Paul Murugesh

For R1 : Mr.S.P.Maharajan
Special Government Pleader

For R2 : No appearance

O R D E R

This Writ Petition has been filed for issuance of a Writ of Mandamus directing the first respondent to transfer the RC Book to the name of the petitioner by considering the petitioner's representation dated 01.08.2023.

2. It is the case of the petitioner that the petitioner is the daughter-in-law of the second respondent. The petitioner's husband/son of the second respondent Jayaprabhu died on 21.11.2022. The submission of the learned counsel for the petitioner is that at the time of the marriage between the petitioner and the said Jayaprabhu (since deceased), the petitioner's family had given a Tipper Lorry bearing Registration No.TN 63 AS 9587 as Gift to the petitioner and her husband/son of the second respondent.

3. It is the case of the petitioner that the subject vehicle is still in possession of the petitioner and that the due to financial difficulties, the petitioner proposes to sell the vehicle.

4. The learned counsel for the petitioner further submitted that when the petitioner approached the first respondent during March 2023 to transfer the registration in the name of the petitioner, the same has been refused purportedly on account of the objection raised by the second respondent before the first respondent on 27.03.2023. The learned counsel for the petitioner further submitted that the petitioner has repaid the amount due to the financier.

5. The learned Special Government Pleader for the first respondent submitted that guidelines have been issued for flagging/blacklisting those vehicles in the 'Vahan' web portal and that if any of the legal heirs raise objections, the transfer of registration cannot be completed under Section 50(2)(a) of the Motor Vehicles Act, 1988.

6. By way of rejoinder, the learned counsel for the petitioner added and has placed reliance of the decision of the Hon'ble Division Bench of this Court rendered on 07.11.2023 in A.S.No.596 of 2019 in the case of **Agnes @ Karpaga Devi and another vs. Pauline @ Pauline Iruthaya Mary**.

7. A reference was made to para 8 of the said decision, wherein, it was held that in case a Christian dies "intestate" leaving behind a widow and kindred, one third of the properties will be taken up for by widow and the remaining properties will go to the kindred.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the first respondent.

9. The petitioner is a Hindu by birth. The petitioner's husband was a Christian. Therefore, the marriage would have been solemnized under the provisions of the Special Marriage Act, 1954. The succession to the property of a person dying intestate is, therefore, to be governed by the provisions of the Indian Succession Act, 1925.

10. In **Agnes @ Karpaga Devi** case referred to *supra*, it was held as under:-

> *"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."*

11. As per Section 32 of the Indian Succession Act, 1925, the property of a person dying intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules specified therein.

12. Sections 24 & 25 of the Indian Succession Act, 1925 define the expression 'kindred or consanguinity' and 'lineal consanguinity'. Sections 24 & 25 of the Indian Succession Act, 1925 read as under:-

Section 24 of the Act	**Section 25 of the Act**

24. Kindred or consanguinity.—Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.	**25. Lineal consanguinity.**—(1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man andhis son, grandson, great-grandson and so downwards in the direct descending line. (2) Every generation constitutes a degree, either ascending or descending. (3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.

13. The expression "lineal descendant" means, "a descendant born out of a lawful marriage". The expression "Kindred" means, relations by blood through a lawful marriage.

14. Therefore, Sections 33 & 33A of the Indian Succession Act, 1925 are relevant. They read as under:-

Section 33 of the Act	Section 33A of the Act

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, 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.	**33A. Special provision where intestate has left widow and no lineal descendants.**—(1) Where the intestate has left a widow but no lineal descendants and the net value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow. (2) Where the net value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent. per annum until payment. (3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of section 33 as if it were the whole of such intestate's property. (4) The net value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expenses of the intestate, and all other lawful liabilities and charges to which the property shall be subject. (5) This section shall not apply— (a) to the property of— (i)any Indian Christian, (ii)any child or grandchild of any male person who is or was at the time of his

15. Legal Heir Certificate dated 17.05.2023 of the deceased Jayaprabhu/son of the second respondent indicates that the petitioner and the said Jayaprabhu have a son named Puvinan, aged about 8 years. As per Section 33(a) of the Act, if deceased person has also left any lineal descendants, one-third of his property shall belong to his widow wife, and the remaining two-thirds shall go to his lineal descendants in accordance with the Rules specified therein.

16. The objection of the second respondent can be entertained by the first respondent only if there were no lineal descendants of late Jayaprabhu/son of the second respondent and to the petitioner.

17. Therefore, the question of the second respondent objecting to the name transfer cannot be countenanced even though the second respondent is one of the legal heirs as per the Legal Heir Certificate dated 17.05.2023 issued by the Tahsildar. The second respondent cannot put any fetters on the proposed name transfer. The second respondent is a lineal consanguinity. Only if there are no legal descendants, widow shall be entitled to one-half of her husband's property, and the other half shall go

to those who are kindred to him.

18. In the light of the above, this Writ Petition deserves to be allowed and is accordingly allowed by directing the first respondent to transfer the RC Book in the name of the petitioners, within a period of four weeks from the date of receipt of a copy of this order. No costs.

25.07.2024

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

Copy To:

The Regional Transport Officer,
Regional Transport Office,
Karaikudi,
Sivagangai District.

C.SARAVANAN, J.

JEN

Pre-Delivery Order made
in
W.P.(MD) No.26566 of 2023

25.07.2024