

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2010

CORAM

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.6429 of 2010

Mrs.Senthamarai Velu,

.. Petitioner

Vs.

1.The Thasildhar,  
Mambalam-Guindy Taluk,  
Chennai - 600 078.

2.Mrs.Vijayavelu .. Respondents  
(R2 impleaded as per order dated 22.4.2010  
by NPVJ in M.P. 1/10 in WP 6429/10)

This Writ Petition filed under Article 226 of the Constitution of India for the issue of a Writ of Mandamus directing the respondent to dispose of the representation dated 3/2/10 or any other appropriate relief.

For Petitioner : Mr.R.Karthikeyan

For Respondent 1 : Mr.P.Subramanian

For Respondent 2 : No appearance

ORDER

The petitioner has approached this Court to dispose of the representation dated 03.02.2010 given to the first respondent. The case of the petitioner is that she was the legally wedded wife of Late.Punithavelu, and the said marriage was solemnized on 16.12.1996. The said Punithavelu died on 31.12.2008 intestate leaving behind the petitioner and his son and daughter, who were born out of the wedlock between Mrs.Vijaya and Punithavelu. Mr.Punithavelu, got divorced Mrs.Vijaya and subsequently, the petitioner got married the said Punithavelu.

2. The petitioner submits that son and daughter of Punithavelu and she are the only legal heirs of Punithavelu who died on 31.12.2008. The petitioner came to know that legal heir certificate dated 24.03.2009 was issued by the first respondent stating that Mrs.Vijayavelu (1) Mrs.Sudhakaran (2), and Mrs.Malarvizhi, are the Legal heirs of the deceased Punithavelu without including petitioner

as Legal heir. She obtained the said information invoking Right To Information Act through communication issued in December 2009 along with certain documents based which the Legal heir Certificate was issued to one Mr.Ramachandran.

3. The respondent issued the said legal heir certificate based on certain documents such as Family Ration Card, Property Tax and therefore the petitioner made a representation on 03.02.2010 requesting to cancel the said legal heir Certificate. Since no order was passed on the said representation the petitioner has come before this Court with this Writ Petition.

4. Since legal heir certificate was issued in favour of Mrs.Vijayavelu, this Court impleaded her as second respondent. The second respondent filed a counter affidavit admitting that the decree for divorce was granted. However she stated that her husband got her signature, taking advantage of her illiteracy and denied that the petitioner was the wife of Punithavelu. She further submitted O.S.No.155 of 2010 has been filed on the file of Principal Judge, Chengalpet against the petitioner for recovery of the properties which are in possession of the petitioner.

5. A perusal of the records would show that the petitioner was married to the said Punithavelu as early as on 15.09.1996 as evidenced from the Extract of the Hindu Marriage Register, issued by Hindu Marriage Registrar, Pammal, issued on 16.12.1996. The decree dated 30.05.1996 obtained in the Foreign Court Viz., the Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole Country, Florida would go to show that Vijayavelu divorced the second respondent

6. The second respondent is entitled to 50% of the pension amount as per clause B of the decree and that would go to show that the decree granted was acted upon by the second respondent. When the marriage was dissolved by the Foreign Court, by judgment in Case No.9543454 - DR - 02 - M, the second respondent cannot claim that she is the legal wife and by going false details she obtained the legal heir certificate stating herself as one of the legal heirs.

7. When the Second Respondent was already divorced as early as on 30.05.1996, the second respondent cannot be a legal heir of late Punithavelu. The first respondent also, without ascertaining the details, issued the legal heirs certificates wrongly without ascertaining the details. The documents given by the Second Respondent to the first respondent for getting legal heirs certificate would go to show that the second respondent produced the Marriage certificate given to Mr.Sudhakaran, the son of second respondent so as to mislead the first respondent. In the Counter Affidavit, the Second Respondent stated in para 5 as follows:

" Without any authority the petitioner holds all movable and immovable properties and Gold and Silver articles and other house hold things of late Punithavelu".

The aforesaid statement reveals that the Second Respondent knows about the status of the petitioner.

8. The first respondent did not even visit the residence of Punithavelu which is given in the death certificate and failed to make spot inspection and conduct enquiry and ascertain the details. It seems without visiting the place and without making any enquiry, based on the wrong and false details given by the Second Respondent, the First Respondent, mechanically issued the certificate. Therefore the said certificate is not valid. The first respondent issued the certificate without verification based on false information given by the Second Respondent as legal heir and without showing the petitioner's name.

9. Second Respondent deliberately suppressed her divorce with late Punithavelu and did not disclose the petitioner as legal heir. The said act is nothing but an attempt to mislead the authorities and grab all the properties of late Punithavelu with malafide intention. The Hon'ble Supreme Court in a recent judgment in Secretary Cannore Muslim Educational Association Kanpur Vs. State of Kerala and others reported in 2010 (5) SCALE 184 held that writ of mandamus confers wide power on High Court to reach in justice. Wherever it is found. In this case the petitioner is found to be affected by illegal act of the first respondent at the instance of the Second Respondent. Therefore, even though the petitioner sought for a Writ of Mandamus, this Court moulds the prayer and accordingly quashes the Legal heir Certificate, dated 24.03.2009 issued by the first respondent stating Mrs.Vijaya Velu and Mr.Sudhakaran and Mrs.Malarvizhi as legal heirs of Late Punithavelu. As it is proved and before this Court that Mrs.Senthamarai Velu (petitioner herein) 2. Mr.Sudhakaran Velu (son) and (3) Malarvizhi Velu (Daughter) are the legal heirs of late Punitha Velu, there is no necessity to remand the matter to the authorities to reconsider the matter. It is only time consuming process. The Hon'ble Supreme Court in H.S.Bains Vs. State of V.T of Chandigarh reported in 1980(4) SCC 631 held that the Court may pass order by itself or give direction which the authority should have passed or given had it properly exercised its powers. Similar dictum is also laid in Shail(Smt) Vs. Manoj Kumar and others reported in 2004(4) SCC 785.

10. Therefore this Court directs the first respondent to issue a legal heir ship certificate of late Punithavelu naming (1) Mrs.Senthamarai Velu (petitioner herein) (2) Mr.Sudhakaran Velu (son) and (3) Malarvizhi Velu (Daughter) as his legal heirs within a period of three weeks from the date of receipt

of a copy of this order or production of a copy of the order by the party.

11. With the above directions, this Writ Petition is disposed of. Though heavy cost is to be slapped on the first and second Respondents separately, this Courts is not awarding the same due judicial restraint. No costs.

Sd/-  
Asst. Registrar

//true copy//

Sub Asst.Registrar

adl

To

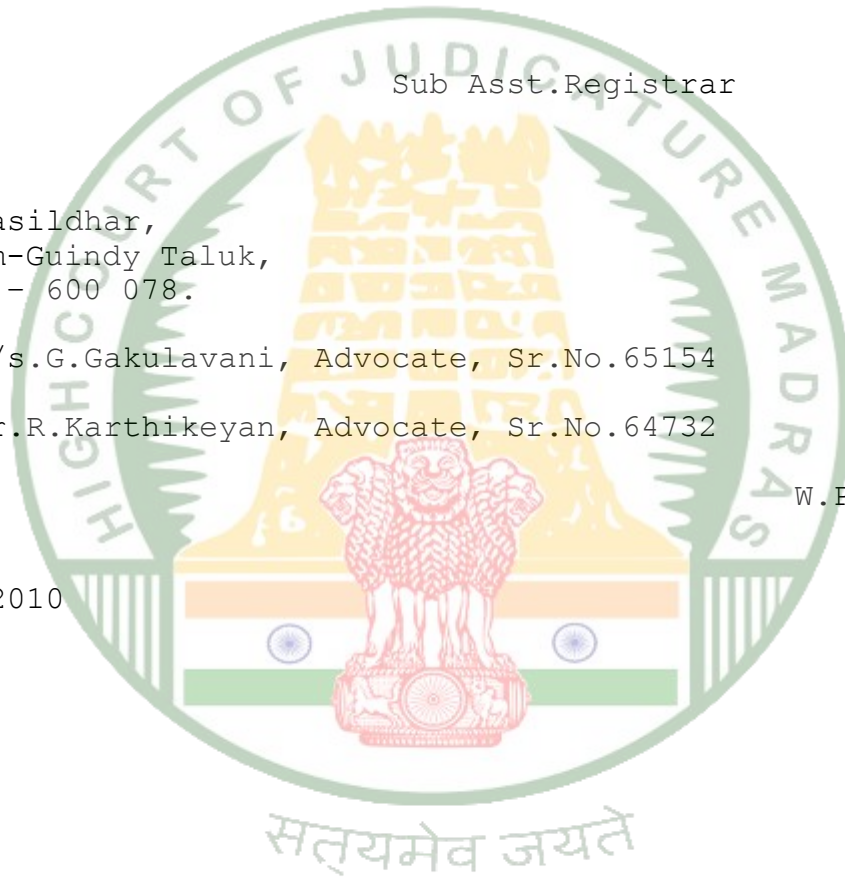
The Thasildhar,  
Mambalam-Guindy Taluk,  
Chennai - 600 078.

1 cc to M/s.G.Gakulavani, Advocate, Sr.No.65154

1 cc to Mr.R.Karthikeyan, Advocate, Sr.No.64732

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KM {CO}  
TP/14.10.2010



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