

(2011) 11 MAD CK 0129

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 538 of 2011 and M.P. (MD) No's. 1 and 2 of 2011

J. Priya

APPELLANT

Vs

The Tahsildar Theni, Chinna
Pandian and Fathima Rani

RESPONDENT

Date of Decision: Nov. 1, 2011

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: G.R. Swaminathan, for the Appellant; T.S. Mohamed Mohideen For Respondent-1 Addl. Govt. Pleader and Mr. J. Padhmaavathi Devi For Respondent-2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. The petitioner has filed the present writ petition, seeking to challenge an order dated 14.10.2010 passed by the Tahsildar, Theni. By the impugned order, the Certificate given by the Tahsildar, dated 26.08.2010 was cancelled. It was stated that while obtaining the said certificate from the Tahsildar, the petitioner has suppressed a vital information that she was the second wife of Late.Johnson, who died on 31.12.2009. Since the material fact was suppressed, the Certificate was not valid and therefore, it was cancelled. Challenging the same, the writ petition came to be filed.

2. The contention of the petitioner was that she is married to Late.Johnson only after the dissolution of the marriage with earlier wife Jayanthi. The resolution was done in a caste Panchayat and the proceedings of the so called Panchayat, dated 26.02.1997 is also filed in the typed set. Therefore, the petitioner states that the certificate has been cancelled in violation of principles of natural justice and the respondents ought not to have taken a telephonic complaint given by the second respondent and the second respondent has no locus standi to file such a complaint.

3. When this matter came up on 12.01.2011, Notice was issued to the respondents and the learned Additional Government Pleader was directed to take notice. On notice from this Court, the Tahsildar, Theni has filed a counter affidavit dated 18.03.2011.

4. In the meanwhile, one Fathima Rani has filed M.P.(MD)No.3 of 2011, seeking to implead herself as party/3rd respondent. That was also ordered by this Court today.

5. The said Fathima Rani, who got impleaded states that she is a daughter of Jayanthi, who is the original wife of Late.Johnson. She submit that the Late.Johnson never married the petitioner and she has also filed a Suit before the Sub-Court, Periyakulam in O.S.No.29 of 2003. In that Suit, she had asked for partition of the family properties, being the legal heir of Late.Johnson. The Suit was also decreed. Since her father late Johnson and brother are no more, she alone is entitled to succeed the estate of said Johnson. She also made necessary compliant to the other authorities and it is on the basis of her complaint, the illegal certificate obtained by the petitioner was cancelled.

6. In the counter affidavit filed by the Tahsildar viz., the first respondent, it was stated that since at the time of grant of certificate on 26.05.2010, there was not even an iota of suspension about the petitioner's legal status and therefore, on the basis of the records submitted including the report of Village Administrative Officer, such certificate was given. Since the petitioner has suppressed the vital fact about she being the second wife, she cannot get any right over in retaining the said certificate, which was obtained illegally. Further, not only he received a telephonic information but also a written complaint and on the basis of the said complaint, the certificate has been cancelled.

7. In the light of these pleadings two question arises for consideration. The first one was that whether the first respondent is entitled to cancel the certificate on the basis of suppression of vital information?. The second question is whether the contention of the petitioner that a dissolution of the marriage can be validly and legally accepted by the authorities, as contended by the petitioner.

8. On the first question that there can never be any right over the certificate, if the certificate was obtained by the suppression of information and even her own stand was that the marriage had taken place subsequent to the so called dissolution in the caste Panchayat, certified by the customary practice. Therefore, unless she discloses these facts including the children born out of the marriage with the previous wife, no certificate can be issued by the Tahsildar. Even otherwise, a legal hearship certificate issued by the Tahsildar is only by the revenue practice and not by any based upon his statutory law and no right can be approved as against the real legal hearship of any person. Even if the Tahsildar refuses a certificate, it is always open to the legal hearship to approach the appropriate civil Court to claim a succession certificate. It is only a jurisdictional civil Court, who got full power to grant such

certificate. Therefore, the petitioner cannot be said an aggrieved person and when the Tahsildar has received information about the suppression of fact, it is always open to him to cancel the said certificate and it cannot be said that such an action is invalid or illegal.

9. The second question regarding the marriage can be validly dissolved by a caste panchayat, this Court is unable to accept any such right between the parties and no such customary right has been recognised by the Court in respect of the community in which the petitioner seeks such declaration. In fact, in more than one case, this Court has pointed out that such a dissolution without the intervention of the Court, is invalid subsequent to the codification of the Hindu Marriage Act.

10. In view of the above, there is no case made out. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.