

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**

PG.D.PM/IR.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Wednesday, the 02nd Day of August 2023

E.A. No.3/2023

in

E.A. No.2/2022

in

E.P. No.57/2021

1.Malliga (died)

2. Nagammal (died)

3. Manimuthu

4.Sekar

5.Vanathai

... Petitioner/Respondent/Petitioner

-Vs-

Divisional Manager,

National Insurance Co.Ltd, Chantigar.

... Repondent/2nd respondent

This petition came on 21.07.2023 before me for final hearing in the presence of Thiru. N.Prithiviraj, Advocate for the petitioners and of Thiru. A.M.Abdulkareen. Advocate for the Respondent and after having heard the arguments of both sides and on perusal of records this Court delivers the following :

ORDER

1. Petition filed by the petitioner Under Sec.75 of C.R.P. and Order 16 Rule 4(1) (b) and section 151 of C.P.C.,

2. Petitioners are the respondents in E.A.No.2/2022 and the decree holders of MACOP No.341/1999. M.C.O.P No.341/1999 was filed by one Malliga before the Subordinate Court, Palani and during the pendency of the said M.C.O.P case she died on 8.3.2000. Therefore her death was registered and her mother Nagammal wife of late.Subban Chettiar was given legal heir ship certificate by the Tahsildar, Srirangam after enquiry on 11.8.2000. Based on the said legal heir ship certificate, she was impleaded as legal heir of Malliga in M.C.O.P No.341/1999 and the same was decreed on 21.7.2008. Based on the decretal order, E.P. No.112/2014 was filed for execution of the said decree and due to the absence of the respondents/judgment debtor, attachment was ordered by the executing Court. Later the Judgment Debtor filed an application to set aside the exparte order passed by Subordinate Court, Palani with delay condonation petition. But the same was also dismissed. The 2nd respondent has not preferred any appeal against the said dismissal order. In these circumstances, the judgment debtor has filed E.A. No.2/2022 under Sec.47 claiming that the said Nagammal is not the legal heir of late Malliga besides other grounds. Therefore in order to prove the legal heir ship certificate, the Tahsildar , Srirangam has to be examined as witness on behalf of this petitioner and hence this petition is

filed to summon the said Tahsildar and to mark the legal heir ship certificate in this case. Therefore, the petitioner prays to allow this petition and to summon the Tahsildar, Srirangam and produce the documents relating to the issuance of the legal heir ship certificate dated 11.8.2000.

3. The respondent has objected this petition stating that the legal heir ship certificate is a public document and the same could be marked in this case. There is no necessity to summon the issuing Authority namely Tahsildar, Srirangam. They have not given reason for summoning the said Government Officer and hence the petition cannot be allowed. He prays to dismiss the petition.

4. Point for consideration in this petition is, **Whether the petition be allowed ?**

5. Heard both sides.

6. POINT :

This is the peculiar case wherein the judgment debtor has raised objection that the present petitioner are not the legal heir of late. Malliga and has also questioned the legal heir ship certificate that it was issued by the Tahsildar of another jurisdiction without proper enquiry. Therefore the petitioners are bound to prove the said legal heir ship certificate and they have every right to summon the Government Officer who issued the legal heir ship certificate. Just because the Government Officer would be busy and that the certificate issued by him is the public document, it cannot be

held that he need not be summoned. This respondent has objected the legal heir ship certificate that it was not properly issued and hence Tahsildar i.e., the Issuance Authority has to be summoned and examined by petitioners to prove the same. No prejudice would be caused to the respondent if the said Tahsildar, Srirangam is summoned. On the other hand, if the petition is dismissed, the petitioners would be deprived of an opportunity to prove the genuineness and validity of the legal heir ship certificate under which they claim right.

7. Therefore, the objections raised by the respondent is liable to be rejected and it is held that the Tahsildar, Srirangam shall be summoned as required by the petitioners. This point is decided accordingly.

In the result, this petition is allowed without cost and the petitioners are permitted to summon Tahsildar, Srirangam along with the relevant records to be examined on their side.

Dictated to the stenographer directly, transcribed and typed by her, corrected by me and pronounced in the Open Court on this the 2nd day of August 2023.

Additional District Judge,
Dindigul.

