

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-03-2026

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.SURENDER

W.P.No.33914 of 2025

Neelaveni

..Petitioner

-VS-

1. The District Revenue Officer
Tiruppur District, Tiruppur.
2. The Revenue Divisional Officer
Tiruppur Revenue Division, Tiruppur
3. The Tahsildar
Tiruppur North Taluk,
Tiruppur.

..Respondents

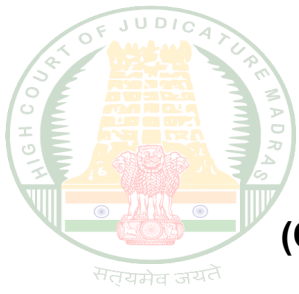
Prayer: To call for the records pertaining to the impugned communication of the 2nd respondent in OO.Mu.No.3060/2025/Aa dated 27.05.2025 and to quash the same as being arbitrary illegal and unsustainable in law, and to consequently direct the respondents 2 and 3 to issue the Legal Heir Certificate of Manivasagam, Son of Palanisamy in favour of the petitioner.

For Petitioner:

Mr.C.Prabakaran

For Respondents:

Mr.R.Neelakandan, AAG
Assisted by Mr.T.Arunkumar,
Addl. Govt. Pleader for R1 to R3



ORDER

(Order of the Court was made by S.M.Subramaniam J.)

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The memo dated 27.05.2025 relegating the petitioner to approach the competent Civil Court for declaration regarding presumption of death is under challenge in the present writ petition.

2. The petitioner states that she married to one Manivasagam, S/o.Palanisamy and her husband was found missing from 14.02.2006. Since he was missing for more than 7 years, the petitioner submitted an application, seeking issuance of death certificate on the ground that her husband is presumed to be dead. Revenue Authorities, relying on G.O.Ms.No.324 dated 28.06.2023, passed the impugned order dated 27.05.2025, relegating the petitioner to approach the competent Civil Court of Law for securing a Decree of Declaration and on production of decree from the Civil Court, death on presumption will be registered and certificate to that effect will be issued accordingly.

3. Learned counsel for the petitioner would submit that the petitioner instituted a Civil Suit before the Principal District Munsif Court, Tiruppur, which was returned on the ground that Revenue Authorities are empowered to issue death certificate and formed an opinion that Civil Suit is not maintainable. However, the suit returned was not re-presented.



4. Guidelines and procedures for legal heir certificate had been issued by the Government in G.O.Ms.No.478 Revenue and Disaster Management dated 29.09.2022. Paragraph No.3 (2) of the Guidelines would show that "In the case of person treated as dead, (person who is missing for a period of 7 years or staying away from the family), the order of the competent court declaring the person as dead." Therefore, it is clear that declaration is to be obtained from Civil Court in respect of any person missing for more than seven years and on production of Civil Court decree, Revenue Authorities will be in a position to register the death on the ground of presumption and issue necessary certificate for availing various benefits.

5. The issue regarding approaching Civil Court for declaration under Sections 107 and 108 of Indian Evidence Act (***Bharatiya Sakshya Adhiniyam (BSA), 2023***) is no more *res integra*. A Hon'ble Division Bench of this Court in the case of **S.Panjavarnam vs. The Tahsildar, Ramanathapuram District (W.P.(MD) No.18886 of 2024) dated 25.02.2026** has elaborately considered the issue and passed an order. Relevant Paragraph Nos.14 to 21 are extracted hereunder:

"14. On examining the structure of the Evidence Act, we find that Part-III Chapter VII deals with burden of proof wherein Section 107 says about on whose shoulder the burden of proving the death of a person shown to have been alive not heard for 7 years lies. Whereas Section 108 says the burden of proving that a person is alive is on the person who claims that the said person was heard within 30 years. Therefore, it is clear



that Sections 107 and 108 has been read together wherever necessary and they are complementary to each other.

15.The expression burden of proof is explained in Section 101 of the Act and it commenced as below:

“whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must first prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

16. Thus, without any pale of doubt, it is clear that the presumption of civil death can be drawn in aid of Section 107 of the Act by discharging the burden of proof before a Court of law, and the party who claims that death of person existing once not heard for 7 years and want a legal heir certificate has to necessarily undergo the process of getting a declarative decree from the competent Court with the aid of Section 107 of the Indian Evidence Act.

17.The learned Judge who has authored R.Janaki's case in W.P(MD)No.5252 of 2024, had referred certain judgments as precedent mostly from the High Court of Kerala and few more from Calcutta High Court. It was not brought to the notice of the said learned Judge, the judgment of the Kerala High Court rendered by the Division Bench consisting of Hon-ble Justice Manikumar S.MANIKUMAR AND Hon-ble Justice SHAJI P.CHAL, reported in 2022 (2)KLT 203(Shajeev George vs~ The Chief Registrar of Births and Deaths, Office of the Director of Panchayat and Ors.), wherein the learned Judges had observed as below:

“19. It is further clear from the provisions of the Evidence Act referred to above that there should be sufficient proof for declaration of the civil death. It is also clear from the said provision that the declaratory decrees can be made by a court only after being satisfied with sufficient proof available on record to do so. The Registrar of Births and Deaths is not expected to go into such intrinsic aspects relating to the burden of proof and the nature of evidence required for arriving at a conclusion with respect to the declaration of the civil death of a person. We are also of the view that the said exercise can only be undertaken by a competent civil court.

20. Be that as it may, Mr.V.Philip Mathews, learned counsel for the appellant, has a case that the writ court is vested with powers to declare the civil death of Mr.P.I.George. We are unable to agree with the same for the fundamental reason that the power exercised by a writ court under Article 226 is of a summary nature and going through the pleadings and the photocopies of the documents produced before it, it is not expected to make a declaration of the civil death of a person,



apart from the fact there are no materials at all to make a declaration.

21. We are also of the view that the declaration of the civil death of a person is a very serious matter, which cannot be done by a statutory authority empowered to issue a death certificate or by any court casually and in haste.

Taking into account all the above aspects, we have no hesitation to hold that the learned single Judge was right in dismissing the writ petition and there is no merit in the appeal. Upshot of the above discussion is that the writ appeal fails. Accordingly, it is dismissed.

18. Before arriving at a conclusive conclusion to fortify the view that the Revenue Authorities are not competent to issue legal heir certificate on the presumption of death unless such a declaration is obtained from a competent civil Court, there are few more judgments has held that the declaration of civil death of a person cannot be done by the executive authority empowered to issue the death certificate. Such a status has to be declared by the competent civil Court after exercising the due process of law. We are of the view that it is suffice to refer the judgment of Full Bench of this Court in W.P(MD)No.25247 of 2021 etc., in P.Venkatachalam vs. Tahsildar, Kumarapalayam Taluk, Namakkal District, wherein this Court has traced the jurisdictional history of issuance of birth and death certificate and the procedure to be adopted in case of issuance of legal heir certificate of a person not heard of for more than 7 years.

19.While considering the question of reference regarding the issuance of legal heir certificate by the revenue officials, the following supplemental instruction bearing (Rt)1534, dated 28.11.1991, issued by the Special Commissioner and Secretary to Government, Revenue Department, also relevant. In the said Circular, the Tahsildar are instructed to avoid issuing legal heir certificate in respect of a person who has left the family for 7 years by deeming that person to be dead and the Circular No.11 of 2017 issued by the Commissioner of Revenue Administration on 09.08.2017, makes the said dicta more emphatic as under:

“7)General Instructions:~

Tahsildars shall not issue legal heirships certificates for the following cases and to inform the applicants to approach the Competent Court for obtaining the legal heirship certificates.

- (i)If more than one wife /husband exist for the deceased
- (ii)When there is a dispute for settlement / partition of properties of the deceased
- (iii)In case of the person treated as death who is missing



for the period of 7 years of staying away from the family.
(iv) In the case of adopted child or no children.
(v) No certificate shall be issued under Indian Succession Act, 1925”

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20. While answering the question referred for authoritative pronouncement, the Full Bench of this Court has summed up the answer as below:

“65. To sum up, or answers to the questions formulated in paragraph, 10, (supra), are as under:

A. Legal heirship is a status governed by the respective personal law of parties through various statutes. The certificates issued by the Tahsildar amount to nothing more than relationship certificate reflecting the opinion of the Tahsildar as to the relationship of the applicant and others named therein with the deceased. Consequently, the certificate issued by the Tahsildar does not affect the legal right of any party and has no bearing on the status of a legal heir which is conferred on an individual under his/her personal law.

B. An administrative circular does not have the force of law and does not bind the citizen or the Court. They, however, bind the Tahsildar as a measure of ensuring administrative discipline and securing consistency in decision-making. The discretion of the Tahsildar is circumscribed by these administrative instructions which may be issued, from time to time, by the Commissioner of Land Administration.

C. Consequently, a writ of mandamus under Article 226 of the Constitution will not lie to direct the Tahsildar to issue a legal heirship certificate contrary to the terms of a circular. An exception to the aforesaid principle is where the circular, ex-facie, suffers from the vice of arbitrariness or perversity or runs counter to any provision of law. In such cases, it is open to the Court to ignore the circular and grant such relief(s) as may be permissible in law. (emphasis added)

D. In the absence of any conflict with any primary or delegated legislation holding the field, G.O. Ms. No.581 Revenue Department dated 03.04.1987 casts a duty on the Tahsildar to issue a legal heirship certificate as per the norms and guidelines prescribed by the Commissioner of Land Administration. G.O. Ms.No.581 Revenue Department dated 03.04.1987 is undoubtedly a law as it has been issued in exercise of executive power under Article 162 of the Constitution of India. Consequently, when the Tahsildar keeps the application pending and does not decide on it one way or the other, a writ of mandamus may be issued by the High Court directing the



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Tahsildar to decide the application in terms of G.O.Ms.No.581 Revenue Department dated 03.04.1987 and the applicable circulars. The decisions in N.Dhanalakshmi (supra) and E. Thirumurthy (supra), to the extent that they hold that the Tahsildar has no power to issue a certificate of this nature, will stand overruled.

E. A legal heirship certificate issued by a Tahsildar cannot be equated to a succession certificate issued by a Court under Part X of the Indian Succession Act, 1925, in respect of the debt or securities. In this view of the matter, the High Court, in exercise of Article 226 of the Constitution of India, does not create any new mechanism as stated in the order of reference.

F. The classification of persons as Class-I and Class-II heirs in Circular No.9 of 2019, dated 24.09.2019, and their application to the heirs of a deceased female Hindu or non-Hindu would lead to chaos. We find the entire edifice of the classification in the Circular is founded on a fallacy that the concept of Class-I and Class-II legal heirs which are applicable to the heirs of a deceased Hindu male under Section 8 of the Hindu Succession Act could be extended across the Board to all religions.

G. Consequently, the Government of Tamil Nadu is directed to issue a fresh Government order in lieu of Circular No.9 of 2019 without the anomalies pointed out, supra, in particular the usage of the expressions "Class-I" and "Class-II" legal heirs under the Hindu Succession Act, 1956. The Government will also consider incorporating a father, blood brother/sister as eligible applicants for unmarried deceased, as also the administrative remedies of appeal and revision found in paragraphs 9 and 10 of the existing Circular No.9 of 2019. This exercise shall be completed within a period of six weeks from today."

21. Thus, it is crystal clear that the writ of mandamus under Article 226 of the Constitution to direct the Tahsildar to issue legal heir certificate by drawing presumption of death is impermissible. The presumption under Section 107 of the Evidence Act (equivalent to Section 110 of BNS Act), is in connection with the burden of proof before the Court by a person, who asserts the said fact. It cannot be a tool or guide for executives like Tahsildar, while considering the issuance of legal heir certificate for a person gone missing from his territorial jurisdiction and unheard for seven years."

6. In view of pronouncement of Division Bench judgment of this Court (supra), the petitioner is at liberty to institute a fresh suit or re-



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present the suit, which was already returned by the Court concerned for adjudication. If any decree of declaration is produced before Revenue Authorities, the same is to be considered by following the Guidelines issued by the Government for issuance of death / legal heir certificates.

With the above observations, the present Writ Petition is disposed of. No costs.

(S.M.S.,J.) (K.S.,J.)
16-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To:

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Tiruppur Revenue Division, Tiruppur.
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Tiruppur North Taluk,
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