

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

WEDNESDAY, THE 6TH DAY OF OCTOBER 2021 / 14TH ASWINA, 1943

WP(C) NO. 13305 OF 2018

PETITIONER:

PREMALATHA SUBHASH, AGED 61 YEARS
W/O. SUBHASH ANANDAN, PERMANANTLY RESIDING SADGURU
CHHAYA, KALYAN CITY, KALYAN, MAHARASHTRA- 421 301,
(RESIDING AT PUTHUKUDY HOUSE, POST PANNIYANNUR,
PANNIYANNUR AMSOM, CHAMBAD DESOM,
THALASSERI TALUK- 670 671.

BY ADV SRI.SATHEESHAN ALAKKADAN

RESPONDENTS :

- 1 THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE,
THIRUVANANTHAPURAM - 695 001.
- 2 DISTRICT COLLECTOR
COLLECTROATE OFFICE,
KANNUR DISTRICT- 670 002.
- 3 THE THAHASILDAR TALUK OFFICE
THALASSERY, KANNUR DISTRICT- 670 101.
- 4 THE VILLAGE OFFICER,
OFFICE OF THE PANNIYANNUR VILLAGE
THALASSERY, KANNUR DISTRICT- 670 671.

BY GOVERNMENT PLEADER SRI.K.M.FAISAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16.09.2021, THE COURT ON 06.10.2021 DELIVERED THE FOLLOWING:

“C.R”

JUDGMENT

The petitioner's mother-in-law Lakshmi Anandan expired on 19.02.2007 at Karnataka. Petitioner's husband expired on 27.07.2013. According to the petitioner, herself, her son and sister-in-law are now permanently residing in the State of Maharashtra and being so, they are not in a position to look after the property of deceased Lakshmi Anandan described in Ext.P1 partition deed situated in Thalassery Taluk and propose to dispose of the property by way of sale. Therefore, the petitioner approached the 3rd respondent, the Tahsildar, Thalassery, with an application dated 05.10.2016 for obtaining legal heirship certificate of deceased Lakshmi Anandan. However, the 3rd respondent rejected her request as per Ext.P5 order stating that, neither the deceased nor the petitioner, her son or her sister-in-law whose names mentioned in the application are permanently residing within the territory of Thalassery Taluk and therefore, the legal heirs of deceased Lakshmi Anandan cannot be determined from that office. It is also stated therein that the petitioner could approach the Civil Court for obtaining Succession Certificate. Ext.P5 order is impugned in this

writ petition. The petitioner has also prayed for direction to the 3rd respondent to issue legal heirship certificate as per her application dated 05.10.2016.

2. According to the petitioner, no proper enquiry was conducted by the 3rd respondent before rejecting the application for legal heirship certificate and Ext.P1 partition deed would show that the deceased Lakshmi Anandan was permanently residing in Thalassery Taluk.

3. A counter affidavit is filed by the 3rd respondent stating that the application for the legal heirship certificate has been rejected after conducting proper enquiry through the Village Officer, Panniyannur and the enquiry revealed that, neither the deceased nor her heirs were permanent residents of Thalassery Taluk. It is further stated that the legal heirship certificate is issued for the purpose of financial transactions limited upto Rs.1 lakh only and the purpose shown in the application is for property transaction which crosses the said limit.

4. Heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents.

5. According to the petitioner, Ext.P1 partition deed would show that Lakshmi Anandan was permanently residing at the address in Thalassery Taluk and the 3rd respondent did not take into consideration the said document while rejecting the application for legal heirship certificate. The petitioner contends that the reasons stated in Ext.P5 for rejecting the application for legal heirship certificate are erroneous and unsustainable in law. She also relied on the decision of this Court reported in **Vishalakshi v. Bank of India [2006 (2) KLT 488]** wherein it has been held that, a Succession Certificate can be applied for only in respect of debts and securities and cannot be granted in respect of immovable property and therefore, the petitioner cannot be relegated to Civil Court particularly when there is no dispute in between the heirs.

6. Usually, an heirship certificate serves to identify the relationship of the heirs to the deceased person. Clause 261 of the Kerala Village Manual and G.O.(MS)No.359/67/RD dated 10.08.1967 deal with issuance of heirship certificate. Clause 261 of the Manual provides that the heirs of a deceased person shall produce heirship certificate issued by the

Tahsildar for receiving the savings deposited by the deceased with the Government or other institutions or other eligible amounts due to the deceased from the Government or other institutions.

7. G.O.(MS)No.359/67/RD dated 10.08.1967 deals with Standing Orders on issuance of certificates and under the head 'Heirship Certificates', it provides that, under the provisions of the Kerala Financial Code, Volume 1, pay, leave salary and other emoluments due to and claimed on behalf of a deceased Government servant can be paid without the production of the usual legal authority, but on production of an heirship certificate issued by the Tahsildar in whose jurisdiction the Government Servant lived and died or was drawing his pay *etc.* or in whose jurisdiction the heirs of the deceased live, provided the amount due to the deceased Government Servant does not exceed Rs.1 lakh (as amended by G.O. (Ms) No. 136/2007/RD dated 27.04.2007). G.O.(MS)No.359/67/RD dated 10.08.1967 further provides that as per Part III of the Kerala Service Rules, the arrears of pension of a deceased pensioner can be paid to the heirs of the deceased to the extent of Rs.1 lakh on production of an

heirship certificate issued by a Tahsildar under the State Government in whose jurisdiction the pensioner lived and died or was drawing his pension or in whose jurisdiction the heirs of the deceased live. It further provides that the heirship certificates should be issued by the Tahsildars on applications put in by the claimants concerned and after enquiring into the claims through the village officers concerned and speaks of other formalities like publication in gazette, calling for objections, enquiry into objections *etc.* Apart for the aforesaid purposes, the said Government Order also authorises the Taluk Tahsildars to issue heirship certificates in regard to disbursement of compensation to the parties concerned under the third party insurance scheme or under directions to parties by liquidators and Co-operative Societies, banks and other institutions after such enquiries into the right and title of the claimants as may be deemed sufficient and after observing the procedure as above.

8. Going by Clause 261 of the Kerala Village Manual and G.O. (MS)No.359/67/RD dated 10.08.1967, the heirship certificates are issued for receiving amounts/monitory benefits of such nature and

limit specified therein, due and claimed on behalf of a deceased person. It is not intended to be issued for the purpose of sale of immovable property.

9. On the petitioner's own showing, she has applied for heirship certificate for the sale of the property of deceased Lakshmi Anandan and not for the purposes specified in Clause 261 of the Kerala Village Manual and G.O.(MS)No.359/67/RD dated 10.08.1967. A certificate of Legal Heirship can be obtained under e-services available under the Kerala Information Technology (Electronic Delivery of Services) Rules, 2010 and the format of Legal Heirship Certificate to be issued in Form 6C appended to the said Rules has to state the purpose for which the certificate is issued. If the purpose is not the one as specified in the Kerala Village Manual and G.O.(MS)No.359/67/RD dated 10.08.1967, the question of jurisdiction of the Tahsildar on the basis of place of residence of the deceased or the heirs does not arise for consideration for issuance of the heirship certificate and the application need not be entertained. The petitioner's contention that, Ext.P1 partition deed would show that Lakshmi Anandan was

permanently residing at the address at Thalassery Taluk is of no relevance.

10. In **Renuka K.K. v State of Kerala and others [2018 (5) KHC 601]**, this Court had occasion to consider the question as to whether Legal Heirship Certificate can be issued to deal with an immovable property. After referring to Clause 261 of the Kerala Village Manual and G.O.(MS)No.359/67/RD dated 10.08.1967, this Court held as under:-

“5...The heirship certificates are intended specifically for movable assets; the value of which is less than Rs.5,000/-. This is the specific purpose for which heir-ship certificates are issued even as per G.O. [MS] No.359/67/RD dated 10.08.67.

6. In such circumstances, there cannot be any issuance of a Legal Heir-ship Certificate to deal with an immovable property. The fact that contemporaneous Gazette notification shows the issuance of such certificate, even in the case of immovable properties cannot persuade this Court to pass an order against the specific clause restricting the issuance of heir-ship certificate only in the case of assets valued less than Rs.5,000/-. The satisfaction of the prospective purchaser cannot be a reason for this Court to direct

issuance of a certificate against the terms of the power conferred.

7. However, the petitioner could very well apply for mutation, in which a similar enquiry would be conducted; as is provided under Rule 27 of the Transfer of Registry Rules, 1966 [for brevity, the Rules]. Or else, the petitioner would have to obtain a letter of administration either from the Administrator General or approach a Court of competent jurisdiction. However sub-section (2) of Section 212 of the Indian Succession Act, 1925 makes inapplicable sub-section (1) of Section 212 in the case of intestacy inter alia of Hindus. Hence the mutation and the prior deed should establish the title of the petitioner, especially when the mutation is granted under Rule 27 of the Rules after conducting an enquiry, which is akin to that conducted for issuance of the Legal Heir-ship Certificate.”

11. Since there is no provision under the Kerala Village Manual and G.O.(MS)No.359/67/RD dated 10.08.1967 to issue legal heirship certificate to deal with an immovable property, no direction can be issued to the 3rd respondent to issue legal heirship certificate to the petitioner for the sale of the property of deceased Lakshmi Anandan.

There is no merit in the writ petition and accordingly, it is

dismissed, however, without prejudice to the right of the petitioner to apply for legal heirship certificate of deceased Lakshmi Anandan before the appropriate authority for any of the purposes specified under Clause 261 of the Kerala Village Manual and G.O. (MS)No.359/67/RD dated 10.08.1967. No order as to costs.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

APENDIX OF WP(C) 13305/2018

PETITIONER'S EXHIBITS

EXHIBIT P1:- TRUE COPY OF THE PARTITION DEED BEARING NO. 796/1992 OF SRO PANUR

EXHIBIT P1(A) TRUE COPY OF THE ENGLISH TRANSLATION OF PARTITION DEED BEARING NO. 796/1992 OF SRO PANUR

EXHIBIT P2:- TRUE COPY OF THE DEATH CERTIFICATE OF DECEASED LAKSHMI ANANDAN

EXHIBIT P3:- TRUE COPY OF THE DEATH CERTIFICATE ISSUED BY THE DEPARTMENT OF PUBLIC HEALTH, CORPORATION OF CHENNAI DATED 19-08-2013

EXHIBIT P4:- TRUE COPY OF THE LEGAL HEIR CERTIFICATE DATED 04-10-2013 ISSUED BY THE THAHASILDAR, MAMBALAM-GUINDI TALUK, CHENNAI

EXHIBIT P5:- TRUE COPY OF THE ORDER DATED 21-08-2017 ISSUED BY 3RD RESPONDENT REJECTING THE APPLICATION FOR LEGAL HEIR CERTIFICATE.

spc/