

**(1991) 01 GUJ CK 0002**  
**In the Gujarat High Court**

Ambalal Shankarbhai Patel

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

---

**Date of Decision :** 28-01-1991

**Acts Referred:**

Hindu Adoptions and Maintenance Act, 1956 — Section 12, 2  
Hindu Minority and Guardianship Act, 1956 — Section 7  
Passports Act, 1967 — Section 5(2)

**Citation :** (1992) 2 GLR 1317

**Hon'ble Judges :** S.B. Majmudar, J; R.K. Abichandani, J

**Bench :** Division Bench

---

**Judgement**

R.K. Abichandani, J.—The petitioner seeks to challenge the order dated 30th August, 1989 at Annexure "B" to the petition, passed by the respondent No. 2-Regional Passport Officer, Ahmedabad, holding that adoption by Hindus not domiciled in India is invalid under the Hindu Adoptions and Maintenance Act, 1956 and that an order should have been obtained from the Court under the Guardians and Wards Act, 1890, and has prayed for a writ of mandamus on the respondents to issue passport in the name of minor Gaurangkumar Suryakant Patel, who is said to have been adopted by Suryakant Ambalal Patel.

2. As per the Deed of Adoption dated 12th July, 1988, at Annexure "A", it was declared that minor Gaurangkumar was given in adoption by performing "Dutt Hom" ceremony on 5-7-1988 by his widowed mother, Sharmishtaben to Patel Suryakant Ambalal, resident of Main Street, Los Angeles, United States of America and his wife Sushilaben who are described as the adoptive parents of the child. As the adoptive parents wanted to take the child with them to the United States, an application was made in the office of the respondent No. 2, Regional Passport Officer for a passport in the name of Gaurangkumar Suryakant Patel. The adoptive father, Suryakant Ambalal Patel, who is the brother-in-law of the petitioner, was a national and citizen of Fizi, but later on he resided in the United States as a Green Card holder. At the time of the hearing of the petition, it was stated on behalf of the petitioner that Suryakant Ambalal Patel was now a

national and citizen of the U.S.A. Thus, admittedly, Suryakant Ambalal Patel was a foreigner. It appears that the communication dated 14th March, 1989 was received by the petitioner from the office of the respondent No. 2, inter alia, stating that as the adoptive parents of the said minor child were foreign nationals and not domiciled in India the adoption was not valid and therefore in absence of Court's order indicating the factum of a valid adoption the passport as prayed for could not be granted in the name of the minor child as son of the adoptive father, Suryakant Ambalal Patel. It appears that, thereafter, a suit was instituted being Regular Civil Suit No. 32 of 1989 in the Court of Civil Judge (J.D.) at Mehmedabad. A declaration was granted on 18th July, 1989 that Gaurangkumar was duly given in adoption by his widowed mother, Sharmishtaben to the adoptive parents. Suryakant Ambalal Patel and his wife Sushilaben and that the child Gaurangkumar Arvindbhai Patel would after the adoption be known as Gaurangkumar Suryakant Patel. The Court declared that the Deed of Adoption executed on 12th July, 1988 was a valid deed. A copy of the judgment was placed on record by consent of both the sides. The Regional Passport Officer, Ahmedabad, was, however, not satisfied with the said judgment and decree and wrote the letter dated 30th August, 1989 at Annexure "B" to the petitioner stating that since the adoptive parents were foreign nationals there was no valid adoption of the minor child and necessary orders should be obtained from the Court under the provisions of Guardians and Wards Act, 1890.

3. It was contended by the learned Counsel, Mr. D.C. Dave, appearing for the petitioner that the Regional Passport Officer was not justified in refusing the grant of passport to minor Gaurangkumar on the ground that the adoptive parents were foreign nationals. He submitted that, a Hindu foreigner, if he comes to India, can validly adopt a child under the provisions of Hindu Adoptions and Maintenance Act, 1956. He submitted that the applicability of the Hindu Adoptions and Maintenance Act, 1956, was not restricted to persons domiciled in India and as provided u/s 2(1), the said Act would apply to any person who was a Hindu by religion as indicated in that provision. He submitted that, admittedly, the adoptive parents were Hindus and therefore irrespective of the fact whether they were foreign nationals or domiciled elsewhere they could validly adopt minor Gaurangkumar who was also Hindu. Mr. Dave strongly relied on the decision of the Calcutta High Court in Prem Singh Vs. Sm. Dulari Bai and Another, in support of his submissions. The contention which was raised before the Calcutta High Court was that any person who was a Hindu by religion or a Buddhist or a Jain or a Sikh by religion must necessarily be domiciled in India for the purpose of application of the Hindu Marriage Act, 1955. The Division Bench on the principle of construction that Court will not supply or add or alter or it any word in a statute unless of course it would become a matter of impelling necessity to take such harmonious construction as to render the Act effective in its operation, construing the provisions of Section 1(1) and Section 2(1) (a) (b) (c) of the Hindu Marriage Act, found that it was quite possible to give effect to the material provisions without reading the word "domiciled" in any of the two

clauses of Section 2. The High Court held that, from a closer examination of the material provisions it followed that a Hindu as defined by Section 2 of the Hindu Marriage Act, would be governed by the provisions of that Act irrespective of the question whether he had at the same time acquired a domicile in India. It was held that citizenship was not a necessary or imperative qualification for application of that Act when the Legislature itself had omitted to make such a qualification a condition precedent to Hindus residing in India. It would not be permissible to read this authority to support a contention that any foreigner having no moorings in India simply by virtue of being a Hindu can come to India and adopt a child under the provisions of the Hindu Adoptions and Maintenance Act, 1956. The case before the Calcutta High Court was under the Hindu Marriage Act, 1955. The Court proceeded on the footing that question of domicile of the husband was not relevant in the case and that he resided in India for quite a long time and described himself as a Hindu and that on well established principle of conflict of laws the question whether a particular marriage was properly solemnized must be decided on the basis of the law of land in which such marriage took place. If the authority cited by Mr. Dave is to be construed laying down a proposition that any Hindu from whatever part of the world can claim applicability of the Hindu Adoptions and Maintenance Act, 1956 by virtue of the Act applying to any person who is a Hindu as provided in Section 2(1) it would lead to startling results and even a Chinese national, who is a Buddhist and therefore a Hindu as defined, may simply come down to India and adopt a child under the Hindu Adoptions and Maintenance Act, 1956. The said Act and other codified laws which incorporate the personal laws of Hindus are not enacted for foreign nationals and primarily apply to the persons to whom the pre-codified law applied. These are the Hindus who lived in various areas in India and were governed by the customs which developed locally and ultimately constituted the Mitakshara, Dayabhaga and other Schools of Law. The Rules of personal law which customarily developed and ultimately were codified in the matters of marriage, succession, adoption, maintenance and guardianship among Hindus in India are intended to apply to the persons among whom these Rules developed and not to aliens simply because they follow the same religion elsewhere in the World. The laws enacted by the Parliament are primarily intended for the Indians and therefore the Hindus as defined in Section 2 of the Hindu Adoptions and Maintenance Act, 1956 and other similar provisions under the codified personal laws applicable to Hindu would mean the Indian Hindus and would not include the foreigner Hindus who are not domiciled in India and had no moorings in India. A foreign national, who may be a Hindu but was never domiciled in India, was not intended to be conferred any right of adopting a child under the Hindu Adoption and Maintenance Act, 1956. u/s 6(1) of the said Act, no adoption shall be valid unless the person adopting has the capacity and also the right to take in an adoption. A foreign national not connected with Indian Hindu Law can obviously have no right to take in adoption under Indian Hindu Law. Therefore, the adoption by such a person under the said Act would not be valid. As provided in Section 5(1), any adoption made in contravention of the

provisions contained in Chapter 2 of the Act. shall be void. Therefore, an adoption made by a person having no right to make an adoption will be void since the foreign national having no moormgs in India though a Hindu is not intended to be governed by the provisions of the Hindu Adoptions and Maintenance Act, 1956. The said Act extends to the whole of India except the State of Jammu and Kashmir as provided in Section 1(2) meaning thereby it intended to apply to the persons in India by codifying the law relating to adoptions and maintenance among Hindus. Thus, the principles of Hindu Law which were hitherto applicable to Hindus governed by various Schools such as Mitakshara and Dayabhaga were codified. The position would not change merely because the words to the effect that the Act applied also to Hindus domiciled in territories to which the Act extended but were outside such territories are not incorporated in Section 1(2) of the Hindu Adoptions and Maintenance Act unlike Section 1(2) of the Hindu Marriage Act. The said provision incorporated in Section 1(2) of the Hindu Marriage Act would only mean that Hindus domiciled in India and governed by the Hindu Marriage Act continue to be governed by the same law when outside the Indian territories. The absence of such extra-territorial operation to the Hindu Adoptions and Maintenance Act, 1956 cannot be so construed as to mean that the element of domicile is to be totally ignored in the Hindu Adoptions & Maintenance Act, 1956 and that a foreign national not domiciled in India and having no moorings in India can claim applicability of the said Act to him. The provisions of the Hindu Adoptions and Maintenance Act, 1956, would obviously apply to all Hindus domiciled in India even though they may be residing anywhere else in the World if they have not acquired any other domicile and can claim applicability of the Act within the territory of India to which it extends.

4. It was sought to be contended by Mr. Dave for the petitioner that even though the adoptive parents were foreign nationals and were domiciled at present in the United States of America, they continue to be governed by the principles of Hindu Law because they carried their personal law with them and therefore they could validly adopt within the territory of India under the provisions of the said Act. Prima facie, it appears to us that, an Indian Hindu, who has acquired domicile of choice abroad would be governed by the law of domicile in such matters and the burden of proving that despite the change in domicile, he continues to be governed by Hindu Law which was previously applicable to him, will be on him. An emigrant Hindu domiciled in a foreign country cannot claim that he has a right to adopt u/s 6(1) of the said Act unless he proves that he carried the personal law and the law of his domicile of choice recognises the applicability of his personal law. In such a case a person who desires to adopt and claims to be a natural guardian by virtue of the provisions of Section 7 of the Hindu Minority and Guardianship Act, 1956. It will have to establish his right and the validity of adoption by getting a declaration that he has become the natural guardian of the minor by virtue of a valid adoption under the Hindu Adoptions and Maintenance Act, 1956. These would therefore, be cases where the passport

authorities would be justified in ascertaining whether the person dealing with the minor by wanting to take him abroad was legally entitled to do so by virtue of having become a guardian under the Indian Law. Once a declaration of a competent Court is obtained evidencing adoption, the effect of the adoptive father becoming the natural guardian and therefore becoming entitled to deal with the person and property of the minor as a natural guardian will follow and the passport authorities will then not be justified in overlooking the provisions of Section 7 of the Hindu Minority and Guardianship Act, which provide that, a natural guardianship of an adopted son, who is minor, passes, on adoption, to the adoptive father and after him to the adoptive mother. The provisions of Section 7 of the Hindu Minority and Guardianship Act, 1956, are a necessary corollary to the provisions of Section 12 of the Hindu Adoptions and Maintenance Act which, inter alia, provide that an adopted child is deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

5. It will be noticed that, though the adoptive father becomes natural guardian of the minor son u/s 7 of the Hindu Minority and Guardianship Act, he will not be entitled to the guardianship by virtue of that provision if the Court is of the opinion that his guardianship will not be for the welfare of the minor child in view of the provisions contained in Section 13(2) of that Act. It is provided u/s 13(2) of the Hindu Minority and Guardianship Act that, no person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the Court is of the opinion that his or her guardianship will not be for the welfare of the minor. The provisions of the Hindu Minority and Guardianship Act, 1956, are in addition to and not, save as expressly provided therein, in derogation of the Guardians and Wards Act, 1890, which lays down the law relating to guardian and ward. The provisions of Sections 7 and 17 of the Guardians and Wards Act, 1890, emphasize that the powers of the Court are to be exercised keeping in view the welfare of the minor child as the paramount consideration while appointing or declaring any person as a guardian of that child. It is clear from the provisions of Section 13(2) of the Hindu Minority and Guardianship Act and the provisions of Sections 7 and 17 of the Guardians and Wards Act, read with Section 2 of the Hindu Minority and Guardianship Act, that in all cases irrespective of the fact whether a person claims guardianship by virtue of his status as father or an adoptive father, the welfare of the minor would be the paramount consideration in deciding the question of guardianship. It may also be noticed in this context, that under the provisions of Clause 17 of the Letters Patent, the High Court is a *loco parentis*. It will, thus, be seen that it is not as if welfare of the child is nobody's concern when a child is given in adoption by his biological parents, as was sought to be suggested on behalf of the petitioner. The observations of the Supreme Court in paragraph 11 of the judgment in *Lakshmi Kant Pandey Vs. Union of India (UOI)*,

can never be construed so as to mean that the welfare of the child is not the concern of the Court when the adoption is given by the biological parents-In the case before the Supreme Court, it was primarily concerned with the children sought to be taken in adoption who were destitute or abandoned and were living in social or child welfare centres and for that purpose the Supreme Court proceeded to lay down certain safeguards when they were given in adoption to foreign parents and then proceeded to lay down normative and procedural safeguards for protecting their interests and promoting their welfare. Thus, when the biological parents gave their child in adoption it was not necessary to undergo the procedure laid down by way of safeguards But, surely this would not mean that the welfare of such child given in adoption by the biological parents can be ignored in face of the aforesaid statutory provisions of Section 13(2) of the Hindu Minority and Guardianship Act and Sections 7 and 17 of the Guardians and Wards Act, which will hold the ground even when the adoptive father becomes a natural guardian by virtue of provisions of Section 7 of the Hindu Minority and Guardianship Act. Even there is a valid adoption under the provisions of the Hindu Adoptions and Maintenance Act, it would be a relevant consideration to keep in view the paramount welfare of the child while deciding any matter where a person purports to deal with the child as his guardian. As will be noticed from Section 8(1) of the Hindu Minority and Guardianship Act, the powers of the natural guardian extend to doing acts which are necessary or reasonable or proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate. Thus, even the powers of the natural guardian are not unlimited qua the minor and only reasonable and proper acts which are for the benefit of the minor can be performed by the natural guardian.

6. Even when a child is given in adoption by his biological parents, when the adoptive parents though Hindus are foreigners domiciled elsewhere, the question of the welfare of the child would clearly arise because if the law of domicile of the adoptive parents does not recognise such adoption, the child would virtually be treated as an orphan and will have no civic rights after it is taken by the adoptive parents to that country. In other words, if the Municipal law of such other country does not recognise such adoption made in India then it would not be in the interest of the child to be allowed to travel to a country where he is likely to be treated as an orphan and where he will not get the rights conferred on the persons domiciled there. Therefore, it must be ascertained whether the incidents intended by the Hindu Law of adoption are recognised by the law of that country. These aspects can be gone into by the Court while considering the question of the welfare of the minor child under the provisions of the Guardians and Wards Act.

7. When adoption is validly done under the Hindu Adoptions and Maintenance Act, 1956, then the consequence of natural guardianship passing to the adoptive father must follow and in that event it is not open" to the passport authorities not to recognise such change in guardianship by refusing to issue passport in favour of the minor child who has acquired his new family name. This follows

from the provisions of Section 12 of the Hindu Adoptions and Maintenance Act which provide that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. Therefore, in cases where there is valid adoption under the Hindu Adoptions and Maintenance Act, the passport authorities would not be justified in insisting on getting declaration of guardianship under the Guardians and Wards Act because the natural guardianship passes to the adoptive father or mother as the case may be by virtue of the provisions of Section 12 of the Hindu Adoptions and Maintenance Act and Section 7 of the Hindu Minority and Guardianship Act. Since the Hindu Minority and Guardianship Act had come into force before the passing of the Hindu Adoptions and Maintenance Act, Section 7 of the Hindu Minority and Guardianship Act speaks only of the natural guardianship of an adopted son and does not refer to that of adopted daughter. However, since adoption of a daughter is now recognised under the provisions of the Hindu Adoptions and Maintenance Act. in view of the provisions of that Act more particularly in Section 12, the adoptive father and the adoptive mother would be regarded as the natural guardians of even the adopted daughter.

8. In the present case, admittedly, the adoptive parents though Hindus were foreign nationals domiciled earlier in Fizi and now in the United States. The question that would arise in such cases is whether such emigrant Hindu can claim to be governed by the law of his domicile of origin, that is Hindu Law as applicable in India. Mr. Dave vehemently argued that the adoptive parents had their moorings in India and therefore even though they had acquired foreign nationality and domicile they continue to be governed by their personal law which was applicable to them while in India. Personal law essentially develops by way of customary rules among the people of a particular area and therefore by its very nature would not apply to persons who never were a part of the people amongst whom the personal law has developed. The rule, that a Hindu family residing in a particular State is prima facie governed by the law of that place, rests on personal law and status and is not founded on any doctrine of *lex loci*. Though there is a presumption that a Hindu family migrating from one State to other carries with it its personal law such presumption may be rebutted by showing that the family has adopted the laws and customs of the State to which it has migrated. In *Sitabai Nabya Kulmi Vs. Tuljabai Trimbak Kulmi and Another*, , the High Court, while considering the question whether adoption was valid for want of an authority from the deceased father in favour of the widow, found that it was established that Leva Patidar Kulmees to which the parties belonged had migrated from Gujarat and in absence of any evidence to show that the family had adopted the law and usages of the Malwa region it must be held that the family carried with it the law of the place from where it migrated and therefore the parties were governed by the Bombay School of Hindu Law and not by

Banaras School of Hindu Law. The High Court held that the presumption that the Hindu migrating family carries with it personal law, that is to say, the law and customs as to succession and family relations prevailing in the State from which it migrated, can be rebutted by showing that the family had adopted the law and usages of the province to which it has migrated. In *Naya Panchayati Udasi Akhada Vs. Motilal Bansgopal Chhatrapuri and Another*, , the High Court found that there was a plea that the Lex Loci of Berar was adopted by the family who had migrated from Punjab and since the migrant family had renounced the law and custom prevailing amongst the Udasis of Punjab and had adopted the laws and customs prevailing amongst the Hindus in Berar including those relating to adoption, permission of the husband to make an adoption was not necessary under the Lex Loci of Berar. In *Balwant Rao v. Baji Rao* XLVIII ILR 30 : AIR 1921 PC 59, the Privy Council, while considering the question of succession which is governed according to the personal law of the individual whose succession is in question approvingly cited following proposition from Mayne's Hindu Law, 8th Edition, Para 48 where he said:

Prima facie any Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu Law recognised in that province... But this law is not merely a local law. It becomes the personal law, and part of the status of every family which is governed by it, consequently where any such family migrates to another province governed by another law, it carries its law with it.

The Privy Council held that if however nothing is known about a man except that he lived in certain places, it will be assumed that his personal law is the law which prevails in that place and in that sense only is domicile of importance. But if more is known then in accordance with such knowledge his personal law must be determined unless it can be shown that he has renounced his original law in favour of the place to which he migrated.

9. In *Benoy Krishna Tewary and Another Vs. State of West Bengal and Others*, . the Division Bench of the High Court held that it is well-known that the domicile of origin attaches to a person wherever he goes until he accepts a new domicile of choice. The original school of law also continues to govern a migrating Hindu family, wherever it goes, until it adopts another school of law operating at the place of its new settlement. Thus, where the parties had migrated from Uttar Pradesh to West Bengal, the High Court held that the Courts below had rightly proceeded on the basis that they were still governed by the Mitakshara School of Hindu Law, they not having adopted at any stage, the Dayabhaga School of Hindu Law prevailing in West Bengal. As provided in Section 9 of the Indian Succession Act, 1925, which reflects the general recognised principle of Private International Law, the domicile of origin prevails until a new domicile is acquired, and Section 10 provides that a man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin. It is provided in Section 13 of that Act, that a new domicile continues until the former

domicile has been resumed or another has been acquired while Section 14 provides that the domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin. Since u/s 12 of the Hindu Adoptions and Maintenance Act, the effect of adoption is that the child is deemed to be child of the adoptive parents for all purposes, he would follow the domicile of such adoptive parents. The idea underlying continuance of domicile of origin until domicile of choice is acquired seems to be that the question affecting the personal status of a human being should be governed constantly by the one and the same law, irrespective of where he may happen to be or of where the facts giving rise to the question, may have occurred. The matters pertaining to adoption are to a large extent governed by the personal law of the parties. Adoption is considered as a matter of domestic relational status and both on general principles and on the analogy of other kinds of domestic status, the applicable law should be that of the domicile. Where the law of the adopter of the child and the child is the same then it poses no difficulty, for example, a valid adoption by a person governed by the Hindu Adoptions and Maintenance Act of a child who is also governed by that Act. However, difficulties arise when domicile of the adopter of the child is different from that of the child. The 1964 Hague Convention on Adoption provides uniform rules on jurisdiction and choice of law and also on recognition of foreign adoptions. The recognition rules are adopted in England by embodying Sections 4 to 7 of the Adoption Act, 1968. The provisions of Section 4 of the Adoption Act, 1968, were brought into force from 1st February, 1973. The effect of Section 4(1) of that Act is that all "overseas adoptions" are to be recognised in England and to have the same incidents and effects as if they were adoptions made in England under the Adoption Act, 1958. It is laid down that overseas adoptions and the incidents thereof shall be treated as if they had been granted under the domestic English Legislation. (See Cheshire's Private International Law, 9th Edition, page 469). We may also notice from the provisions of the Child Welfare Act, 1954, (Ontario Act) that it has been provided that every person adopted under the laws of Ontario and every person adopted under the laws of any other province in the territory of Canada or under the laws of any other country shall, for all purposes in Ontario be governed by the provisions of that Act. (See Private International Law by Castel, 1960 Edition, page 147). In the United States also the subject of adoption has been in the hands of the Legislature. Adoption in the Roman Law was an act by which a person undertook to rear a child of another, and appoint such child as his heir. It derived its original significance mainly from the existence of the patria potestas which was peculiar to Roman citizenship, and involved, as between parent and child, relations of paternity and filiation peculiar to Roman law. In India, the custom of adoption had its root in antiquity and adoption is not just a creation of statute but a sacrament recognised since time immemorial. The process of adoption has a wide impact on the future of the child adopted and therefore it is essential to ascertain whether the adoption would be recognised by the country of the domicile of the adopter. On the basis of comity, the nations recognise overseas adoptions. Where a Hindu residing abroad acquires domicile of choice,

then prima facie, he would be governed by the law of his domicile which governs the matters affecting family relations or the family property and would include the matter of adoption. A Hindu having his moorings in India and who has acquired domicile abroad can however, establish that he continues to be governed by the personal law which was applicable to him at the time when he left India and therefore he could validly adopt under the provisions of the Hindu Adoptions and Maintenance Act. He has further to establish that the country of his domicile of choice would recognise the adoption made in accordance with the personal law which he carried. This latter requirement would be essential to safeguard the welfare of the minor child, who, on being taken by the adoptive parents outside India, should be recognised as the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption. Reference to the law of domicile of the minor child automatically constitutes a reference to the law of domicile of one or both of the child natural parents whose interest in the adoption is very great. The paramount welfare of the child requires that the laws of the domicile of choice of the adopter should recognise the validity of the adoption made in India. It would be, therefore, appropriate that cumulative reference to the domiciliary laws of both the parties, namely, the adoptive parents and that of the child and the natural parents should be made. In other words, if the adopter and child are of different domiciles, Court should satisfy itself that the adoption complies with the requirements of both the relevant systems of personal law. (See *The Conflict of Laws* by Graveson, Fourth Edition, page 185). The Court, however, would retain its overriding power of regarding the welfare of the adopted child as the paramount consideration even if the adoption and the consequent change of guardianship is recognised by the law of the domicile of choice of the adopter. The burden of proving that, despite the change in domicile, the Indian Hindu who has settled abroad continues to be governed by the Hindu Law which was previously applicable to his family, will be on him. It is only when he establishes that he continues to be governed by his personal law previously applicable to him and that his continued governance by that law is recognised by the country of his domicile of choice that he will have a right to adopt u/s 6(1) of the Hindu Adoptions and Maintenance Act. Since the question of such adoption would also involve change of natural guardianship, it would be essential for such a person to get a declaration that he has become a guardian pursuant to a valid adoption which declaration the Court can give u/s 7 of the Guardians and Wards Act, 1890, when it is satisfied that it is for the welfare of the minor that such order should be made.

10. To sum up the effect of the above discussion, we are of the view that a foreigner Hindu having no moorings in India cannot effect a valid adoption under the provisions of the Hindu Adoptions and Maintenance Act. We are further of the view that a Hindu, having his domicile of origin in India residing in any other country but not having acquired any other domicile by choice can effect valid adoption under the provisions of Hindu Adoptions and Maintenance Act like any other Hindu domiciled in India. We are, however, of the view that, a Hindu, who

was having his domicile of origin in India having acquired domicile of choice elsewhere will have to establish that he carried the personal law of his family as was applicable to him at the time when he left India and that he continues to follow the same and further that the law of the country of his domicile of choice recognises such personal law in the matter of adoption and therefore his right to adopt u/s 6(1) is recognised as a subsisting right even in the country where he has settled by acquiring domicile of choice. We are of the considered view that the welfare of the child stringently demands such enquiry to ensure that the child adopted by such Hindu who had acquired domicile of choice but has preserved personal law of his family should be recognised as the child of the adoptive father or the mother for all purposes with effect from the date of the adoption as envisaged by Section 12 of the Hindu Adoptions and Maintenance Act. We hold that, having acquired domicile of choice, an Indian Hindu would prima facie cease to be governed by his personal law and the burden of proving that despite the change in domicile, he continues to be governed by the Hindu Law which was previously applicable to his family, will be on him. This requirement, we feel, should adequately safeguard the interest of an Indian Hindu child who is adopted under the provisions of the Hindu Adoptions and Maintenance Act. As regards a foreigner Hindu having no moorings in India, we are of the definite opinion that, merely by virtue of being a Hindu, the provisions of the Hindu Adoptions and Maintenance Act, 1956 cannot be resorted to by such person. We base this conclusion on the fact that the Hindu codified personal law is based on the Hindu customary law which was essentially of local applicability amongst the people to whom the customary rules applied and by whom they were evolved. The customary rules of Hindu Law which developed in the matters of family relations and family property have no reference to the aliens who do not form part of the people among whom the Rules developed. To illustrate, a Chinese Buddhist, who never had any moorings in India and was totally an alien to the law as had developed in India, cannot be described as a Hindu within the definition of Section 2 of the Hindu Adoptions and Maintenance Act and cannot claim any valid adoption under the provisions of the Act.

11. Coming to the facts of this case, admittedly, the adoptive parents are foreign nationals, but they had moorings in India. However, since they had acquired domicile of choice elsewhere, it was for them to establish that they preserved the personal law as was applicable to them when they left India and therefore, they could validly adopt the child under the provisions of the Hindu Adoptions and Maintenance Act. This exercise of discharging the burden of having preserved the personal law was not undertaken by the adoptive parents. The Deed of Adoption at Annexure "A" dated 12th July, 1988 discloses that the Dutt Horn Ceremony was performed on 5th July, 1988 and the child was taken in adoption from that day. It has been recited therein that from the date of adoption the child will have the same status of the son of the adopter as if he is his natural born son. The adoption was given by the widowed mother of the child. The adoptive parents are at present domiciled in the United States of which they are nationals. The

declaration was obtained from the Court of Civil Judge (J.D.), Mehmedabad on 18th July, 1989 about the validity of adoption. The Dutt Horn ceremony was performed in presence of the relatives of the parties. The adopter is the sister's husband of the grandfather of the child and therefore closely related. The child has been allowed to be taken to his adoptive parents in the United States by an interim relief granted by this Court on 6-12-1989 requiring the Regional Passport Officer to issue passport in the new name of the minor child Gaurangkumar on the condition that the petitioner who is the natural grandfather of the child will produce the minor before the Court as and when required. The undertaking has already been filed. It would appear that, in the absence of any specific local provision to the contrary it is generally held "that persons whose relationship to another is the result of a recognized foreign adoption receive locally the incidents applicable either to local legitimate status or to a local adoption"-Kennedy: Adoption in the Conflict of Laws, 34 C B R 537 cited by Castel in his Private International Law 1960 Ed 145. The American approach is said to be the same (See Taintor: Adoption in the Conflict of Laws, 15 U. of Pitt. L. Rev. 222 (1954) Footnote 179 and Restatement Section 143} referred to in the Private International Law by Castel at page 146. It appears that, in general, in the United States and in all Canadian provinces special statutory provisions exist, some dealing only with one or more of the incidents arising from adoption, others with the effect to be given to a foreign decree generally (See Castel on Private International Law, 1960 Edition at page 147).

12. From the facts and circumstances which are on record, it appears that even though the adoptive parents had acquired foreign domicile, they had moorings in India and continue to follow their personal law despite change in domicile and the country of domicile of their choice namely, United States, recognises such foreign adoptions. It appears that, in the United States, on the doctrine of comity, children of foreign adoption whose rights are to be adjudicated in the forum are regarded in the same light as though they had been duly adopted under the laws of the forum, at least in so far as real estate is concerned, even though the foreign adoption may be by a method different from the domestic one. (See Corpus Juris Secundum, Volume II, paragraph 66 on Foreign Adoption at page 459). Since the child is already allowed to leave India and is with the adoptive parents in the United States pursuant to the adoption evidenced by the Deed of Adoption dated 18th July, 1988, the paramount welfare of the child requires that now he should not be disturbed especially when, prima facie, we are satisfied that his adoption is valid due to the adoptive parents having their moorings in India and having preserved their personal law entitling them to make a valid adoption under the Hindu Adoptions and Maintenance Act, which adoption would, as it appears, be recognised by the United States where they have been now domiciled. We shall make it clear that, our decision, not to disturb the child and to recognise his adoption as valid, is based on a paramount consideration of the welfare of the child and that is why we are not relegating the adoptive parents to the competent Court for a detailed proof of their having

preserved the personal law, that is, Hindu Law of their domicile of origin, that is, India and that the law of the domicile of their choice recognises the adoption made in India under the Hindu Adoptions and Maintenance Act in accordance with such preserved personal law. Before parting with this discussion, we may state that the aforesaid conclusion of ours is reached in the light of the above facts which were brought to our notice and which have remained uncontroverted on record. So far as the Regional Passport Officer is concerned, it cannot be said that he was not justified in requiring the parties to get proper adjudication from the Court under the Guardians and Wards Act, 1890, in the light of the material which was brought to his notice at that stage and in view of our holding as above that when adoption is made by the foreign nationals, they have to establish that they earlier had their moorings in India and they could validly adopt under their personal law as was available to them when they left India and, therefore, they can validly adopt a child under the provisions of the Hindu Adoptions and Maintenance Act, and further that such adoption was recognised by the law of their domicile of choice.

13. It was tried to be suggested by Mr. Dave appearing for the petitioner that the only grounds on which the passport could be refused by the respondents were the grounds enumerated in Section 6 of the Passport Act, 1957. While it is true that the passport authority can refuse to issue a passport or a travel document only on the grounds mentioned in Section 6(2), it cannot be overlooked that, for getting a passport or a travel document, an application is required to be made under the statutory provision contained in Section 5 of the Passport Act and such application has to be in the prescribed form and should contain the required particulars. Our attention was drawn by Mr. H.M. Bhagat, the learned Counsel for the respondents to Rule 5 of Passport Rules, 1980, under which the form of application is prescribed in Part 1 of Schedule 3 and it is provided that application for passport shall be made in that form. The proviso to Rule 5 empowers the passport authorities to require the applicant to furnish additional information while making an enquiry u/s 5(2) of the Passport Act. It will be noticed from the prescribed form that, details about parents name or change in name are required to be filled up. Mr. Bhagat submitted that, it is only because the applicant wanted the passport to be in the name of minor Gaurangkumar showing his parents as the adoptive parents, that the difficulty had arisen otherwise, there was no objection on the part of the passport authorities to the grant of the passport in the name of the minor which he had prior to his adoption.

14. We have already held that, once the adoption is validly done under the Hindu Adoptions and Maintenance Act, 1956, the effect of such adoption will be that the child shall be deemed to be the child of his or her adoptive father or mother for all purposes as provided in Section 12 of that Act. Thus, in such cases, the passport authorities must recognise the new name of the adopted child and treat such child as the child of the adoptive parents for all purposes while issuing the passport. In cases where, however, the adoptive parents have acquired a new domicile of choice and have prima facie to prove that they preserved their

personal law which was applicable to them when they left and that adoption under such law was recognised by the country of domicile of their choice, the passport authorities would be justified in requiring the proof of a valid adoption and consequent change in natural guardianship in form of a declaration from a competent Court while enquiring u/s 5(2) of the Passport Act, 1967. In the present case, however, in view of what we said above, it is not necessary for the passport authority to require any further proof in form of a declaration from a Court about a valid adoption and consequent change of guardianship in respect of minor Gaurangkumar and having regard to the particular facts and circumstances of this case and keeping in view the paramount welfare of the child, we issue direction to the respondents that a passport be issued in the name of minor Gaurangkumar Suryakant Patel and that if such passport was issued pursuant to the interim orders of this Court, it should be treated as having been validly issued.

Rule is, therefore, made absolute accordingly with no order as to costs.