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(1990) 06 KAR CK 0015

In the Karnataka High Court

Case No : M.F.A. No''s. 669 and 659 of 1990

Canara Bank Relief and Welfare Society and Others — APPELLANT

Vs

Nil — RESPONDENT

Date of Decision : 30-06-1990

Acts Referred:
Family Courts Act, 1984 — Section 7
Hindu Adoption and Maintenance Act, 1956 — Section 9, 9 (4)

Citation : (1990) ILR (Kar) 1339 : (1990) 3 KarLJ 76

Hon'ble Judges : Venkatachala, J;Hakeem, J

Bench : Division Bench

Advocate : Leslie D''Silva, for the Appellant;

Final Decision : Allowed

Judgement

Venkatachala, J.—These appeals are preferred by petitioners in Miscellaneous Cases Nos. 10087/89 and 10078/89 against the common order dated 22-9-1989 made in seven clubbed cases by the Court of XIX Additional City Civil Judge ("the Court of City Civil Judge"), Bangalore, directing return of the applications filed by them under Sub-section (4) of Section 9 of the Hindu Adoptions and Maintenance Act, 1956 ("the Act"), as per Rule 10 of Order VII of the Code of Civil Procedure, 1908, at the same time requiring the petitioners to avail of the provision in Rule 10-A of Order VII of that Code.

2. Canara Bank Relief and Welfare Society, the first appellant in each of these appeals, was the first petitioner In each of the cases - Miscellaneous Case No. 10087/89 and Miscellaneous Case No. 10078/89, on the file of the Court of City Civil Judge. K.S. Nair and Mrs. Sulekha Nair, the second and the third appellants in M.F.A. FR.No. 12573/89, were the second and the third petitioners in Miscellaneous Case No. 10087/89, on the file of the Court of City Civil Judge. T.L. Narayana Rao and Smt. Meenakshi Narayana Rao, the second and the third appellants in M.F.A. FR.No. 12575/89 were the second and the third petitioners in Miscellaneous Case No. 10078/89, on the file of the Court of City Civil Judge. Of

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the two abandoned children of Hindu religion, who were under the care and protection of the first petitioner (first appellant here), one was sought to be given in adoption to K.S. Nair and Mrs. Sulekha Nair, petitioners 2 and 3 in Miscellaneous Case No. 10087/89, and another was sought to be given in adoption to T.L. Narayana Rao and Smt. Meenakshi Narayana Rao, petitioners 2 and 3 in Miscellaneous Case No. 10078/89. As previous permission of the Court was required to be obtained under Sub-section (4) of Section 9 of the Act to give such children in adoption to any person/s, the first petitioner along with the intending adoptive parents filed the said applications in the Court of City Civil Judge to obtain such permission and those applications had been registered in that Court as Miscellaneous Cases. But, the Court of City Civil Judge, by its order under appeals, since took the view that it is only the Family Court of Bangalore City established under the Family Courts Act, 1984 ("the Family Court Act") which had the jurisdiction to deal with ;such applications, the petitioners therein have presented these appeals questioning the correctness of that order, as stated at the outset.

3. The short question, which arises for our decision in these appeals, being whether the Family Court of Bangalore City established under the Family Courts Act has jurisdiction to deal with the applications u/s 9(4) of the Act filed by petitioner-1 along with other petitioners, we propose to deal with it by referring to the material provisions of the Act and the material provisions of the Family Courts Act bearing on the question.

4. Section 9 of the Act, which, by its Sub-section (4), requires the obtaining of previous permission of a Court by a guardian of a Hindu child, whose parents are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a Court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, may be excerpted in full for a proper understanding of the matter in controversy -

"9. Persona capable of giving in adoption -

(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of Sub-section (3) and Sub-section (4) the father, if alive, shall alone have the right to give in adoption but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world 01 has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind.

(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind.

(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a

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Court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of a child may give the child in adoption with the previous permission of the Court to any person including the guardian himself.

(5) Before granting permission to a guardian under Sub-section (4), the Court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward or in consideration of the adoption except such as the Court may sanction.

Explanation: For the purposes of this Section-

(i) the expressions "father" and "mother" do not include an adoptive father and an adoptive mother;

(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes -

(a) a guardian appointed by the will of the child''s father or mother; and

(b)a guardian appointed declared by a Court; and

(ii) "Court" means the City or Civil Court or a District Court within the local limits of whose jurisdiction the child to be adopted ordinarily resides."

An analysis of the above provision makes the following matters clear -

(i) That for a Hindu child, whose parents are dead or have completely and finally renounced the world or have abandoned such child or have been declared by a Court of competent jurisdiction to be of unsound mind or where the parentage of such child is not known, it is the guardian of such child who can give the child in adoption to any person including himself; (ii) that the guardian of such Hindu child has to obtain previous permission of the Court before giving the child to any person in adoption; (iii) that the guardian of such Hindu child means a person having the care of the person of the child or both of his person and property, among others; (iv) that the Court from which permission to give in adoption of such Hindu child has to be obtained, is the City or Civil Court or a District Court within the local limits of whose jurisdiction the child to be adopted ordinarily resides; (v) that grant of permission by the Court concerned to give a Hindu child in adoption must depend upon the satisfaction to be obtained by it as to the welfare of the child as provided for in Sub-section (5) thereof; and (vi) that the restriction placed under Sub-section (4) in the matter of obtaining previous permission of the Court for giving in adoption a Hindu child is only on a guardian and not other persons capable of giving in adoption referred to in Section 9 of the Act itself.

The matters so brought out from the analysis of Section 9 of the Act if seen in

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the context of other provisions of the Act bearing on adoption, the giving of a child referred to in Sub-section (4) of Section 9 by a guardian referred to therein in favour of a person including himself, imposes an additional legal obligation on the guardian of the child to obtain previous permission of the Court, referred to in that Section, as a condition precedent therefor. The question, which, therefore, arises for our consideration, would be whether the power conferred on the Court, referred to in Sub-section (4) of Section 9 of the Act in the matter of giving previous permission to a guardian of a child to give such child in adoption, has come to be vested in the Family Court after its establishment under the Family Courts Act, as would make us hold that it has resulted in the former Court being divested of such power.

The Court of City Civil Judge, as we see from the order under appeals, has failed to address itself to this question and resolve the same. In the Miscellaneous Cases in which the order appealed against is made, the applications, which were under consideration, were those made under Sub-section (4) of Section 9 of the Act before the Court of City Civil Judge for obtaining that Court''s previous permission respecting two children in the matter of giving them in adoption, invoking the jurisdiction of the City Civil Court for granting permission in exercise of its power conferred under Sub-section (4) of Section 9 of the Act. As to whether the said matter of granting previous permission to a guardian to give in adoption a child under its care, has been vested with the Family Court established under the Family Courts Act, requires examination with reference to the matters in which the Family Court is empowered to exercise its jurisdiction under the Family Courts Act, Section 7 thereof, which bears on the question, could be excerpted -

"7. Jurisdiction - (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation:- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage, for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

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(c) a suit or proceeding between the parties to a marriage with respect of the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise -

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

As none of the matters categorised in Clauses (a) to (g) of the Explanation to Sub-section (1) of Section 7 of the Act or in Clauses (a) and (b) of Sub-section (2) thereof can be regarded as a flatter relating to grant of previous permission to give a child in adoption by its guardian envisaged in Sub-section (4) of Section 9 of the Act, it has to be inevitably held that the matter respecting which applications were made in the Miscellaneous Cases before the Court of City Civil Judge under Sub-section (4) of Section 9 of the Act, is not a matter falling within the jurisdiction of the Family Court, respecting which it can exercise jurisdiction u/s 7 of the Family Courts Act. Hence, the order of the Court of City Civil Judge appealed against holding that the applications of the petitioners in Miscellaneous Case Nos. 10087/89 and 10073/89 (appellants here) should have been filed before the Family Court of Bangalore City, established under the Family Courts Act, cannot be sustained.

5. Before parting, we may state that though it is open to the Parliament to invest the Family Courts established under the Family Courts Act with the jurisdiction to deal with a matter covered under Sub-section (4) of Section. 9 of the Act, when such a thing has not yet been done, we cannot help holding that the Family Court has no jurisdiction to deal with such matter.

6. In the result, we allow these appeals, set aside the order under appeals and direct the Court of XIX Additional City Civil Judge, Bangalore, to take back on its file the cases of the appellants and others similarly situated, if they express their desire in that regard, and dispose them of in accordance with law.

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