
(2014) 09 MAD CK 0365
In the Madras High Court
Case No : O.P. No. 335 of 2014
In Re: Arjun Neelakantan

Date of Decision : 22-09-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 39(f)
Hindu Adoptions and Maintenance Act, 1956 — Section 6
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 41, 41(6), 68(1)

Citation : (2015) 3 Crimes 444 : (2015) 1 CTC 33 : (2014) 5 LW 513

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Judgement

S. Tamilvanan, J.—The Original Petition has been filed under Section 41(6) of Juvenile Justice (Care & Protection of Children) Act, 2000 (As amended by Act 33 of 2006) read with Clause 17 of the Letters Patent, seeking an order:

- (a) that the petitioners be appointed as the adoptive parents of the person of the minors Muthumari, born on 03.05.2009 and Ashwini born on 19.03.2013;
- (b) that the minors Muthumari and Ashwini be entitled to the legal status of a biological son and daughter with all the rights of succession and inheritance;
- (c) that the petitioners be permitted to take physical custody of the minors Muthumari and Ashwini for being taken outside India, outside the jurisdiction of this Court for being adopted, brought up and maintained by them in their home town at P.O. Box. 4473, Flat 2064, Building #2, La Rose De Sable, Crazy Signal, Doha, State of Qatar, UAE;
- (d) that the minors may be accompanied by an escort to reach the petitioner's house at P.O. Box 4473, Flat 2064, Building #2, La Rose De Sable, Crazy Signal, Doha, State of Qatar, UAE.

2. The petitioners have stated that they are residing in the given address in Doha, State of Qatar, IAE and they are represented by power of attorney agent, Mrs. Sunitha Joe, wife of Rajesh Joe, Indian Christian, residing at No. 3/91, Mettu Colony, Manapakkam, Chennai - 125. On behalf of the petitioners, their

power of attorney has filed this petition, stating that she is a social worker of the Christ Faith Home for Children and seeking adoption of the said children in favour of the petitioners.

3. Mr. T. Ramachandran, learned counsel appearing for the petitioners submitted that the petition has been filed under Section 41(6) of Juvenile Justice (Care and Protection of Children) Act, 2000, (herein after referred to as the Act), seeking adoption. On a perusal of the petition, it is brought to the notice that both the petitioners are represented by their power of attorney for taking the child in adoption. However, no one is giving the children in adoption, as per the petition filed by the power of attorney of the petitioners.

4. The power of attorney of the petitioners has filed proof affidavit on behalf of the petitioners, stating that she was appointed as power of attorney by the petitioners on 16.12.2013. The specific and limited power of attorney for the adoption are marked respectively as Ex. P. 1 and Ex. P. 2. It has been contended by the learned counsel appearing for the petitioners that both the power of attorney deeds were signed before the Embassy of India, Doha, Qatar. In the evidence of P.W. 1 available in the form of proof affidavit, it has been stated that she is the power of attorney of the petitioners and the documents, Ex. P. 1 and Ex. P. 2 are specific power of attorney deeds appointed P.W. 1, which would show that P.W. 1 has been nominated by the petitioners, as their power of attorney for taking the children in adoption on behalf of the petitioners.

5. Ex. P. 3 is an attested xerox copy of the Certificate of Registration of the Christ Faith Home for Children, Chennai. Ex. P. 4 is the Certificate of Recognition given by the Social Welfare and Nutritious Meals Programme Department, Chennai. It shows that the certificate has been issued by the Department for three years from 31.12.2011. Ex. P. 5 is the Certificate of the Central Adoption Resource Authority, dated 21.03.2014. It is also an attested xerox copy of a Notary Public, stating that No objection Certificate has been issued by the concerned authority for Muthumari, male child, whose Date of Birth is 03.05.2009 and Ashwini, a female child, her Date of Birth is stated as 19.03.2013.

6. A photocopy of the extract of marriage certificate, bearing serial number of marriage certificate, bearing serial number of marriage 67/2002, for the marriage between the first and second petitioner has been marked as Ex. P. 7. Ex. P. 8 is the original medical certificate and medical investigation report of the first petitioner, dated 09.05.2012. Ex. P. 9 is the original medical certificate and medical investigation report of the second petitioner, dated 09.05.2012. Ex. P. 10 is the photocopy of order, dated 03.10.2013 passed by Child Welfare Committee, Chengalpattu, certifying that the abandoned Juvenile by name Muthumari is free for adoption.

7. It is seen that Ex. P. 11 is a photocopy of order, dated 03.10.2013 passed by Child Welfare Committee, Chengalpattu, certifying that the abandoned Juvenile by name Ashwini is free for adoption. Ex. P. 12 is the original child study report

of Muthumari, dated 29.10.2013 along with medical examination report of Muthumari, dated 06.11.2013. Ex. P. 13 is the original child study report of Ashwini, dated 29.10.2013 along with medical examination report of Ashwini, dated 03.11.2013. Ex. P. 14 is the original Income proof letter of the first petitioner, dated 04.06.2012. Ex. P. 15 series (2 Nos.) are the original police clearance certificates of both the petitioners. Ex. P. 16 is the original certificate of undertaking by adoption agency Omana Menon, dated 21.06.2012. Ex. P. 17 is the joint declaration of willingness of both the petitioners to adopt the minor children Muthumari and Ashwini. Ex. P. 18 is a photograph of the petitioners. Ex. P. 19 is a photograph of the minor child Muthumari along with the negative. Ex. P. 20 is a photograph of the minor child Ashwini along with the negative.

8. Mr. T. Ramachandran, learned counsel appearing for the petitioners submitted that in view of Section 41(6) of Juvenile Justice (Care and Protection of Children) Act, 2000 and Rules framed thereunder in the year 2007, the petitioners are eligible to adopt the children, represented by their power of attorney.

9. It is not in dispute that Section 41 of Juvenile Justice (Care and Protection of Children) Act, 2000 (herein after referred to as the Act), deals with adoption, which reads as follows :

"(1) The primary responsibility for providing care and protection to children shall be that of his family.

(2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a court after satisfying itself regarding the investigation having been carried out, as required for giving such children in adoption.

(4) The State Government shall recognise one or more of its institutions or voluntary organisations in each district, as specialised adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3). Provided that the children's homes and the institutions run by the State Government or a voluntary organisation for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3)."

Sub-sections (2), (3) and (4) were incorporated by Act 33 of 2006 w.e.f. 22.08.2006.

10. Section 41(6) of the Act is relevant for giving and taking adoption under the Act. Earlier, as per the Hindu Adoptions and Maintenance Act, 1956, adoption could be possible only for persons belonging to Hindu religion, wherein various terms and conditions have been stipulated, by way of fixing age limit for the adoptive parents, 21 years more than the child, when the child is of the opposite sex. Similarly, when a married person takes adoption of a child, consent of the other spouse could be mandatory, similarly, when there are biological children available for the person taking adoption, there could be restriction, on the ground either son or son's son in case of adopting a male child and there should be no daughter or son's daughter, while adopting a female child. However, as per the Juvenile Justice (Care and Protection of Children) Act, 2000, it has been made clear under Section 41(6), with regard to adoption as follows:

"(6) The court may allow a child to be given in adoption-

(a) to a person irrespective of material status; or

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless couples."

11. As per Section 68(1) of the Act, the State Government may make Rules for the purposes of carrying out the purposes and the object of the Act. While passing the orders for Adoption, the Court has to consider the paramount safety and welfare of the child being adopted.

12. In this regard, the Hon"ble Supreme Court has laid down proper guidelines in a recent decision in *Shabnam Hashmi v. Union of India & Ors.*, (W.P. (Civil) No. 470 of 2005), dated 19.02.2014. A Three Judge Bench of the Hon"ble Apex Court, referring earlier decisions in *Lakshmi Kant Pandey Vs. Union of India (UOI)*, and also considering *Philips Alfred Malvin Vs. Gonsalvis*, , has held that under Section 41 of the Act (as amended in 2006), the responsibility of giving in adoption was cast upon the Court, which was also governed by the Juvenile Justice (Care and Protection of Children) Rules, 2007. the appropriate civil court having jurisdiction in matters of adoption and guardianship including the court of the District Judge, family courts or the city civil court is vested with the power and as per rule 33(5) of the said Rules, the competent court, having jurisdiction, has to deal with adoption under the Act and the Rules framed thereunder.

13. The High Court of Judicature Madras at Chennai, being one of the Chartered High Courts, having original civil jurisdiction is empowered to deal with matters relating to adoption, as per rule 33(5) of the Juvenile Justice (Care and Protection of Children) Rule, 2007. As per Section 68(1) of the Act, the State Government, may by notification in the Official Gazette, make rules to carry out the purposes of this Act. In exercising of the rule making power vested by the Act, most of the States have followed suit and adopted the guidelines issued by Central Adoption Resource Authority (CARA), making the same applicable in the

matter of adoption within the territorial boundaries of the concerned State.

14. The duty entrusted to the Court under rule 33(5) of the Rules is not a mere formality. It is the paramount duty of the Court to consider the safety and welfare of the child, being adopted, while recognising the adoption. It is also mandatory to verify the genuineness of the claim made by the proposed adoptive parent(s), by way of deciding the capability of the person taking adoption. Similarly, the person giving in adoption, should have capacity (*locus standi*) to do so. Either, they must be natural parents or in the absence of natural parents, State has to play the role, in order to fulfil the Constitutional mandate in safeguarding the safety and welfare of the child being adopted.

15. In this case, the petitioners 1 and 2 have produced supporting documents to show that they have the capacity to adopt the children, they have stated their financial status and also produced supporting documents. However, in the instant case, as per the petition, it is seen that no one is giving the child in adoption. It cannot be disputed that a child, who is given in adoption is also having Fundamental Rights for life and personal liberty, guaranteed under Article 21 of the Constitution, as that of other persons and such right of the child has to be safeguarded by the Court, for which, Court is vested with the power, as per rule 33(5) of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Therefore, the Court is duty bound to verify the genuineness of the adoption, being made.

16. India is a party to the Declaration of the Rights of the child and also for the Convention on the Rights of the child, which are as follows:

1. The Declaration of the Rights of the child (General Assembly Resolution 1386 (XIV) of 20th November, 1959).

2. The convention on the Rights of the child (General Assembly Resolution 44/25 of 20th November, 1989).

Hence, the rights of the child being given in adoption has to be protected properly.

17. The Court can also take judicial notice that there may be child abuse in various ways by unscrupulous persons that should be prevented. In this case, it is not in dispute that the petitioners seem to be responsible persons and to show their real interest, they have also produced supporting materials. However, the Court has to maintain uniformity and be vigil in safeguarding the interest of child, under Section 41(6) of the Act, when the child is being adopted by persons, residing outside the country or by foreign Nationalists. In order to safeguard the interest of the child, there must be person(s) giving the child in adoption and similarly person(s) taking the child in adoption. Mrs.Sunitha Joe is running a child home and she is acting as power of attorney of the petitioners. In the instant case, the child is not given in adoption by natural parent(s). The said safeguard is available under Section 6 of the Hindu Adoptions and Maintenance

Act, 1956. Since minor children, Muthumari and Ashwini are said to be neglected children, free for adoption, to safeguard their rights properly and to verify the genuineness of the adoption, the petitioners should implead the State, represented by competent authority as a party for giving the child in adoption or atleast raise no objection for the adoption, being a party to the petition and not an outsider to the O.P., by issued Certificate alone.

18. It is not in dispute that the State Government has not framed any Rules, pursuant to the Act. On the aforesaid circumstances, impleading the State, to ascertain the views of the State in giving child for adoption would be proper, in view of the Constitutional mandate, enshrined under Article 39(f), which reads thus :

"39(f) : The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

Similarly, the Constitutional guarantee given for life and personal liberty under Article 21 of the Constitution shall also be safeguarded in following the adoption procedure under Section 41(6) of the Act and the Rules.

19. The child Home should also furnish the details about the child, being given in adoption, as to how the child was brought to the home and how long the child is in the Home and other relevant details required for adoption. Merely based on self-serving version of the petitioners, who are strangers to the child, relying on certain xerox copies and attested copies, said to have been issued by the authorities, adoption could not be recognised by the court, in the absence of impleading the State as necessary party.

20. The petitioners 1 and 2 are represented by their power of attorney, however, no one is representing the child being given in adoption in the O.P. Though parent(s) of the respective child are not available to give the child in adoption, in my view the State shall be impleaded as respondent, when the child is not given in adoption by the natural parent(s), in order to safeguard and maintain the Constitutional mandate, since they are in need of proper safety and a secured life. As Indian child, being taken in adoption by an Indian residing in a foreign country or a Foreign national, in order to prevent any abuse against the children in future, State shall be impleaded as respondent.

21. As discussed earlier in this order, having considered the safety, secured life and also the welfare of the child, being taken in adoption, this Court finds it just and reasonable, to direct the petitioners to implead the State Government, represented by the Secretary to Government, Social Welfare Department or the Head of the Social Welfare Department of the State as respondent, to meet the ends of justice. Therefore, for taking steps to implead the State as respondent, two weeks time is granted.