

(2011) 03 GUJ CK 0163
In the Gujarat High Court

Case No : Special Civil Application No. 1957 of 2011

Manoj Omprakash Goel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Births, Deaths and Marriages Registration Act, 1886 — Section 14, 15
Constitution of India, 1950 — Article 14, 226, 227, 24
Guardians and Wards Act, 1890 — Section 7(1)
Gujarat Registration of Births and Deaths Rules, 2004 — Rule 11, 11(4), 11(5), 7
Hindu Adoptions and Maintenance Act, 1956 — Section 25, 9(4)

Citation : (2011) 2 GLH 455 : (2011) 2 GLR 1734 : (2011) 8 RCR(Civil) 225

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : M.P. Shah For Petitioner and Ms. Kruti M. Shah For Petitioner, for the Appellant; H.K. Patel AGP For Respondent : 1, Mr. Ashish M. Dagli For Respondent: 2, for the Respondent

Final Decision : Allowed

Judgement

Mr. Rajesh H. Shukla, J.—Rule. Learned A.G.P., Mr.H.K. Patel for the respondent No. 1-State of Gujarat and learned Counsel, Mr. Ashish Dagli for the respondent No. 2-Sub Registrar waive service of notice of rule.

2. Heard learned Counsel, Ms. Kruti M. Shah for the petitioner, learned A.G.P., Mr. H. K. Patel for the respondent No. 1 and learned Counsel, Mr.Ashish Dagli for the respondent No. 2.

3. The present petition has been filed by the petitioner under Articles 14, 21, 226 and 227 of the Constitution of India as well as under the provisions of the Birth, Deaths and Marriages Registration Act, 1969 and under the provisions of the Gujarat Registration of Births Deaths Rules, 2004 for the prayer inter alia that the appropriate writ, direction or order may be issued to the respondents to correct the name of his son in column No. 1 from "Puru" to "Harsh" and to add

the names of mother and father in column No. 7 and 8 as Deepika Manoj Goel and Manoj Omprakash Goel and further be pleased to direct the respondent No. 2 to issue new birth certificate.

4. The facts of the case briefly stated are that the petitioner is an adoptive father of a child and he made an application on 19.12.2010 to the respondent No. 2 for making necessary changes in the birth register both with regard to child's name as well as name of father and mother in the said certificate. It is required to be mentioned that the petitioner and his wife have adopted a child from Junagadh Shishu Mangal Institute, for which, they have instituted Civil Misc. Application No.7 of 1997 u/s 7(1) of the Guardians & Wards Act, 1890 and also u/s 9(4) of the Hindu Adoption & Maintenance Act, 1956 in the Court of the Additional Assistant Judge, Junagadh and the decree of the Competent Court was also passed with regard to the adoption of a child i.e. minor "Puru". After the adoption proceedings were completed, name was changed from "Puru" to "Harsh" and it was notified in the Government of Gujarat Gazettee, Part-II dated 23.04.1998 accordingly. Affidavits have been filed by the parents, which have been produced along with other documents. They also produced School Leaving Certificate of the Principal of St. Xavier's High School, Surat at Annexure-F, where the name of a child is recorded as Goel Harsh Manoj. Thereafter, they had moved an application to the respondent No. 2, who vide communication dated 27.12.2010 rejected the application contending that the power is not within the provisions of Section 15 of the Act. Therefore, the present petition has been filed.

5. Learned Counsel, Ms. Shah referred to the documents produced including the order passed by the Extra Assistant Judge, Junagadh in Civil Misc. Application No.7 of 1997 with regard to adoption, the application for adoption, the documents produced before the Corporation and the certificate of St. Xavier's High School, Surat. Learned Counsel, Ms.Shah referred to order dated 27.12.2010 at Annexure-G addressed by the respondent No. 2 to the petitioner informing that as per the guidelines/ rule 7 (Section 14, Rule 11) of the Birth & Deaths Registration Act, 1969 as well as u/s 15 of the Act, there is no such provisions and, therefore, correction as prayed for cannot be made.

6. Learned Counsel, Mr.Dagli for the respondent No. 2 has referred to the provisions of the Birth, Deaths and Marriages Registration Act, 1969 as well as Rules known as the Gujarat Registration of Births Deaths Rules, 2004 and submitted that Rule 11 provides for such correction and it does not refer to any such eventuality and, therefore, the impugned order has been passed. He submitted that normally decree of the Competent Court would clarify but in this case, it is not so and, therefore, as it cannot be said to be a formal or clerical error and as it does not fall in any of the ground enumerated in Rule 11, it has not been corrected.

7. Learned Counsel, Ms.Shah pointedly referred to the observations made by this Court in a judgment reported in 2008 (2) GLH 1551 in case of Soham Sanatbhai Shukla v. State of Gujarat & Ors. and submitted that as observed and quoted in

this judgment referring to the earlier order, Section 15 has been specifically quoted, which reads as under :-

"15. Correction or cancellation of entry in the register of births and deaths - If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.

8. She further submitted that Rule 11 has been referred to in this judgment and in that case also, it was a case of child, who was abundant and subsequently adopted, where the change of name was permitted. She, therefore, submitted that as observed and directed in that case, the Court had directed the Municipal Corporation/ Competent Authority to change the name of a adoptive baby, which are similar circumstances in the present case.

9. In view of the rival submissions, it is required to be considered whether the present petition can be entertained and what order could be passed.

10. As discussed above, there is no dispute that the petitioner is an adoptive father of a child "Puru", whose name is now sought to be changed as "Harsh". They had preferred an application being Civil Misc. Application No.7 of 1997 u/s 7(1) of the Guardians & Wards Act, 1890 and also u/s 9(4) of the Hindu Adoption & Maintenance Act, 1956 and the copy of the order is also produced, however, deed of adoption is not produced, from which, it could have been reflected the name as well as details. However, fact remains that child has been adopted by the petitioner and his wife after completing legal formalities and they had also decided to substitute/change his name and in fact, School Leaving Certificate also refers to the name "Harsh" instead of "Puru" as originally recorded. However, they decided to substitute the name of a child in the birth and death register and the application was made, which has been rejected on the ground that there is no such power and case does not fall in any of the situation enumerated in Rule 11 or Section 15 of the Act.

11. The submissions have been made by the learned Counsel, Mr.Dagli referring to Rule 11 and, hence, Rule 11 is required to be mentioned. Rule 11(5) clearly provides as under :-

(5) Notwithstanding anything contained in sub-rule (1) and sub-rule (4) the Registrar shall make report of any correction of the kind referred to therein giving necessary details to the District Registrar of Births and Deaths.

12. Rule 11 (6) provides as under :-

(6) If it is proved to the satisfaction of the Registrar that any entry in the register

of births and deaths has been made fraudulently or improperly, he shall make a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf u/s 25 of the Act and on hearing from him take necessary action in the matter.

13. Thus, sub-rule (5) starts with non-obstante clause and it lays down the procedure. Similarly, Rule 11(4) provides as under :-

(4) If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed u/s 15 of the Act upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

14. Section 15 of the Act clearly suggests that if it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may correct the error. This would again imply that it is for the Registrar to arrive at the satisfaction based on same documentary evidence and, thereafter, he can make correction. Therefore, the obligation is cast upon the Registrar to make such changes depending upon the facts as stated hereinabove like in the present case when there is an adoption of a child. Therefore, though it may not have specifically mentioned in the Rules, Section 15 read with Rules 11(4) and 11(5) give this power to the Registrar and in fact, it cast obligation upon the Registrar to make such correction after having been satisfied on the basis of the documentary evidence to make correction. Therefore, it cannot be said that there is no such provision. Therefore, the impugned order deserves to be quashed and set aside and the present petition deserves to be allowed.

15. In the circumstances, the present petition is allowed in terms of Para No.7(B). The impugned decision dated 27.12.2010 of the respondent No. 2 rejecting the application of the petition for the correction in the name of a child is hereby quashed and set aside. The respondent Authorities shall carry out necessary correction in the register of the Births and Deaths so as to correct and substitute the name of a child in Column No.1 from "Puru" to "Harsh" and also to add names of mother and father in Column Nos.7 & 8 as Deepika Manoj Goel and Manoj Omprakash Goel respectively and, thereafter, issue fresh birth certificate.

16. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.