

(2017) 01 P&H CK 0224
In the Punjab And Haryana At Chandigarh
Case No : 249 of 2016

Mohamed Arman

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

Citation : (2017) 01 P&H CK 0224

Hon'ble Judges : Mahesh Grover, Shekher Dhawan

Bench : DIVISION BENCH

Advocate : Inderjit Kaushal, V.K.Kaushal

Judgement

1. The appellant impugns the judgment of the learned Single Judge dated 07.12.2015. The appellant filed a writ petition impugning the order of the Regional Passport Officer, Chandigarh refusing to issue a new passport to him on the ground that the name of his step father cannot be included in the passport. The appellant's biological parents who are Mohammedans divorced each other with the custody of the appellant remaining with the mother who remarried on 07.09.2004 with one Mohamed Mansoor, the step father of the appellant.

2. The appellant was born out of the wedlock of Afsar Jahan (mother) and Nadeem Ahmed on 14.07.2000 who went through a divorce as per the Mohammedan Law. The talaq was duly affirmed vide affidavit dated 20.08.2004. The subsequent Nikahnama with Mohamed Mansoor is on record as Annexure P-3. The appellant was 4 years old at the time of remarriage of his mother and has been brought up by his foster father who has discharged his duties as a parent to him. The appellant was initially named Arman by his biological parents but underwent a name change to be rechristened Mohamed Arman ostensibly to adopt one of the names of his father who is Mohamed Mansoor. The change was notified in the newspaper as also in the school record.

3. In the application submitted for grant of passport the name of Mohamed Mansoor has been mentioned as adopted father but the application was declined

by the passport authorities by resorting to para 3.1 of Chapter IX of the Passport Manual (2001), which reads as under :- "(2) In the event of remarriage after divorce, the name of stepfather/stepmother cannot be written in the passport of children from the previous marriage. The relationship of the child to his biological parents subsists, even after divorce by parents. It is also not possible to leave the column of father or mother blank in the passport in such cases. Therefore, such applicants must write the names of their biological parents in the application form. However, if the stepfather or stepmother is appointed by a Court as legal guardian, the name of such step-parent can be written as legal guardian."

The learned Single Judge opined that the passport authorities were right to rely on the afore extracted provision to deny the application of the child.

4. The learned counsel for the appellant contends that the aforesaid reasoning of the learned Single Judge is erroneous as for all intents and purposes the appellant has been brought up by his foster father Mohamed Mansoor. He cannot use the name of his biological father who abandoned him when he was just 4 years old and if the respondents continue to insist and interpret the afore-extracted provisions of the Passport Manual it would cause immense hardship to him.

5. The prayer has been opposed by the learned counsel for the respondents who has stated that the language of the Passport Manual prohibits the use of the name of step father unless he has been appointed as legal guardian by the court or adopted in accordance with law and thus justifies the reasoning of the learned Single Judge. We have heard the learned counsel for the parties.

6. A closer look at the provisions of the Passport Manual, which has been extracted above, makes it abundantly clear that if a step father or a step mother has been appointed by a court as legal guardian, the name of such step parent can be written as a legal guardian. Thus, it is not the case that the name of the step father and step mother cannot be used in the passport application at all. Indeed a person who has fathered a child would continue to retain his biological link but what is important is relationship of an individual as a father or a guardian to an abandoned child through an arrangement of a subsequent marriage accepted by the society and recognized by law.

7. A child could have been born to a woman either through the relationship in marriage or without it. A child born from a relationship with no foundation of a marriage would entitle the single mother to lend her name without the mention of the biological father. Thus in these circumstances the importance of appending biological father's name becomes insignificant considerably. In *Shalu Nigam & Anr. v. The Regional Passport Officer & Anr.*, W.P.(C) No.155/2016, decided on 17.05.2016, the Delhi Court permitted the issuance of passport to the petitioner therein who insisted that she did not wish to use her biological father's name as he had completely abdicated his responsibilities to leave her in the care of her

mother who brought her up as a single mother.

8. On the parity of reasoning we would conclude that the insistence on the biological father's name would in the given circumstances of a broken marriage or even no marriage is absolutely unnecessary and the passport authorities have only to ensure the status of the child qua his parents or step parents who become the legal guardian as well through processes other than the process of court such as valid second marriage and it would be in the fitness of things that such an arrangement be also acknowledged by the authorities as valid.

9. As long as there is sufficient material to show that the step parents have and are discharging their responsibilities as a legal guardian to the child who has been unfortunately abandoned by his biological parents/parents, the passport authorities would not be justified in refusing a passport to such a child.

10. In the instant case there is a Nikahnama authenticating the marriage of Afsar Janah i.e. appellant's mother with Mohamed Mansoor and even though it is not accompanied by a legal document showing adoption but the Talaqnama establishes the dissolution of a relationship between the biological father of the appellant and his mother Afsar Jahan. It also notices that the biological father has stated that he is unable to carry on with this marriage and his child namely Arman. Similarly, there is material to show that Nadeem Ahmed, the biological father had given a written Talaq to the appellant's mother and has also stated as follows :- "4. I had already discharged my liability by giving custody of child named Arman to her in the presence of her parents and witnesses."

11. The Nikahanama executed in the year 2004 also acknowledges the appellant having been adopted by Mohamed Mansoor, the foster father. In fact the word "adoption" in the present case would be synonyms with "legal guardian" as in the absence of any formal adoption deed the foster father who has undertaken the responsibilities of a minor child would necessarily have to be treated as such whether with or without court orders. We are also of the opinion that the observation/reasoning of the learned Single Judge referring to unforeseen complications qua inheritance and maintenance and to comment on the legality of the adoption was totally unwarranted for it was not the scope of the petition. What was required was to consider whether in the circumstances in which the appellant was placed was the action of the passport authorities justified or not.

12. Hence for the reasons which have stated above the appellant would be entitled to a passport by using the name of his step father who has to be construed as a legal guardian for all intents and purposes in view of the substantive material placed on record to undeniably establish such a relationship.

13. We would thus while setting aside the impugned judgment direct the passport authorities to reconsider the issue in the light of what has been stated above and issue the passport to the appellant by permitting him to use the name of his step father subject, however, to the appellant fulfilling other eligibility criteria. Appeal allowed.