
(1999) 12 AP CK 0074
In the Andhra Pradesh High Court
Case No : AAO No. 800 of 1999

Nagarai T. Narimella

APPELLANT

Vs

St. Theresa's Tender Loving Care Home, Hyd. and another

RESPONDENT

Date of Decision : 29-12-1999

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 9(4)

Citation : (2000) 5 ALD 482 : (2000) 3 ALT 482 : (2001) 1 DMC 143

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Mr. P. Gangaiah Naidu, for the Appellant;

Judgement

1. This appeal is filed against the order of the Chief Judge, City Civil Court passed in OP No.957 of 1998 rejecting the application filed by the appellant herein u/s 9(4) of the Hindu Adoptions and Maintenance Act, 1956 seeking permission to adopt the minor baby Anjali. It is contended that the learned Judge has erroneously dismissed the application holding that the appellant ought to have filed two petitions one for appointing the first petitioner who is the de facto guardian as de jure guardian and another for permission to the first petitioner to give the child in adoption to the second petitioner. The brief facts of the case are as follows:

The first petitioner was registered Society recognised by the Government of India to act as placement agency which runs a Destitute Home for abandoned children. Veeraiah and Nagamani are the natural parents of baby Anjali who was born on 22-10-1997 and was abandoned to the society to give in adoption to the suitable parents since they have four daughters and they are unable to maintain them. The natural guardians have given a declaration Ex.A9 stating that the child be given in adoption to any suitable person.

2. The appellant herein/second petitioner who was working as Senior Consultant in Price Water House Associates, Bangalore and was earning Rs.4,30,000/-

annually, he got married Anuradha in the year 1990. Since, the couple could not beget children due to some gynec problem, accordingly they decided to adopt abandoned child baby Anjali.

3. To prove the averments in the petition PWs 1 to 3 were examined. PW. 1 who is Chief Co-ordinator of the first petitioner-Society deposed that couple viz., Veeraiah and Nagamani who are labourers by profession and residents of Kurnool handed over the child born on 22-10-1997 to the hospital along with Ex.A7 since they are unable to maintain the child. That the child was brought to Hyderabad and maintained in the creche of the first petitioner-society. The evidence of PWs.2 and 3 indicate that they married in the year 1990 and couple could not conceive a child Ex.A3 was a certificate stating that Smt. Anuradha underwent infertility treatment and due to some gynec problem the Doctor advised the couple to go for adoption. Accordingly, the couple intended to adopt the abandoned child Anjali. Exs.A4 and A5 are certificates relating to the general health condition of the couple.

4. In view of the advise given by the Doctor, the second petitioner/appellant desired to have the abandoned child Anjali to be adopted by seeking permission of the Court. The second petitioner along with the society filed a petition u/s 9(4) of the Hindu Adoptions and Maintenance Act, 1956.

5. The learned Judge has extracted the relevant provisions of Section 9(4) of the Act without considering the explanation aspect i.e., the expression "Guardian" which is to the following effect:

"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 or declared by a Court;

.....

6. The learned Judge solely impounding a new theory of de jure and defacto guardian on technical ground dismissed the application holding that the petitioner should have filed two petitions.

7. In the instant case admittedly the abandoned child is in the custody of first petitioner therein and who is a guardian and having satisfied about the financial and other relevant aspects the second petitioner before the trial Court sought permission from the Court to give abandoned child to the second petitioner. Instead of granting the permission the trial Court erroneously under wrong interpretation of Section 9(4) of the Act dismissed the application.

8. Having perused the explanation, facts and circumstances of the status of second petitioner/appellant, I am satisfied that the learned Judge committed an error in dismissing the application. In the circumstances, permission is hereby accorded and the order passed by the trial Court is hereby set aside by allowing

the petition filed u/s 9(4) of the Act. Accordingly, the appeal is allowed. No costs.