
(1996) 01 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13270 of 1996

Narinderjit Kaur

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 24-01-1996

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 11, 6
Passports Act, 1967 — Section 5

Citation : AIR 1997 P&H 280 : (1997) 115 PLR 822 : (1997) 2 RCR(Civil) 86

Hon'ble Judges : K.S. Kumaran, J;Ashok Bhan, J

Bench : Division Bench

Advocate : K.K. Goel, for the Appellant; S.K. Sharma, A.S.C. for U.O.I., for the Respondent

Judgement

Ashok Bhan, J.—Prayer made in this petition is for issuance of a writ of certiorari quashing the order dated 7-2-1996, Annexure P-1, vide which the Passport Officer, Jalandhar, has declined to issue the passport to the petitioner on the ground that her "adoption made by proxy is not valid in Indian law" and for issuance of a writ of mandamus directing the respondents to issue passport to the petitioner.

2. Petitioner, who is a minor, was taken in adoption on 2-3-1990 by Mohinder Kaur Parhar d/o Harbans Singh, resident of 2947, Turner Street in the City of Vancouver in the Province of British Columbia, Canada, through her attorney and brother-in-law Surjit Singh Jaswal s/o Gurbachan Singh Jaswal, Mohinder Kaur Parhar had executed a Special Power of Attorney duly embossed by the office of the Financial Commissioner, Punjab, on 12-2-1990 in favour of Surjit Singh Jaswal, authorising him to adopt Narinderjit Kaur on her behalf. It is not disputed that the natural parents of Narinderjit Kaur had the capacity to give the adoptive child in adoption and the adoptive mother had the legal capacity to take the adoptive child in adoption. Adoptive child had the legal capacity of being given and taken in adoption. The adoptive mother did not have any Hindu daughter or

sons daughter, either by legitimate blood relationship or by adoption, living at the time of adoption. Adoption took place at a Gurudwara in Village Narur, District Kapurthala, in the presence of Holy Sikh Scripture Sri Guru Granth Sahib, relatives and brotherhood, natural father, with full and free consent of the adoptive child's natural mother, did actually and physically transfer the adoptive child to the adoptive mother by actually giving the said child in the lap of the adoptive mother's Attorney Surjit Singh Jaswal. The said act was done with the intention of giving the adoptive child in adoption to the adoptive mother. Adoptive mother, through her attorney, did actually take the adoptive child in her lap from the adoptive child's natural father. The said act was done with the intention of taking the said child to be her own daughter. The giving and taking in adoption ceremony of the adoptive child was performed by observing and performing all due religious and social ceremonies befitting the occasion. A registered deed was executed, a copy of which has been attached as Annexure P-2 with the writ petition.

3. Petitioner was having a passport (No. F-447097) issued on 7-4-1989. In this passport, name of the natural father Prabhjot Singh was mentioned. As the petitioner was being sponsored by her adoptive mother to immigrate to Canada, necessity arose for having a new passport mentioning the name of the adoptive mother. Petitioner applied for the fresh passport mentioning the adoptive mother's name vide application No. 425125/95-PDL/ADOPT with the Passport Officer, Jalandhar. The said application of the petitioner was rejected by the Passport Officer vide order, Annexure P-I, by observing that the matter has been considered in consultation with the Government of India who have advised that adoption was made by proxy is not valid in Indian Law" and "It is regretted that passport facility as applied for could not be granted.

4. In the written statement, respondent have taken a stand contrary to what has been stated in the impugned order, Annexure P-1. Respondent No. 2 has admitted that the matter pertaining to adoption of a child by proxy was examined further in consultation with the Ministry of Law which has clarified that the child to be adopted can be given/taken in adoption by the parents or guardian "under their authority. It is further stated that the petitioner cannot be granted the passport as Mohinder Kaur Parhar, adoptive mother, who was a divorcee earlier had remarried on 16-11-1994 and, therefore, she had no authority to take the petitioner in adoption.

5. Validity of adoption has to be examined in the light of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as "the Act"). Section 6 of the Act provides that no adoption shall be valid unless the person adopting has the capacity and also the right, to take in adoption, the person giving in adoption has the capacity to do so; the person adopted is capable of being taken in adoption and the adoption is made in compliance with the other conditions mentioned in Section 11.

6. Capacity of the natural parents to give and the capacity of the adoptive

mother to take the petitioner in adoption is not in dispute. It is also not disputed that the petitioner was capable of being taken in adoption. Other conditions for a valid adoption are prescribed in Section 11 of the Act. Relevant provisions of this section with which we are concerned is (vi), which reads as under :--

"(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption."

7. It clearly envisages that the child can be adopted "under the authority" of the parents. In this case, the adoptive mother had executed a valid Power of Attorney authorising Surjit Singh Jaswal to take the petitioner in adoption on her behalf. Actual adoption took place according to the Sikh rites in the presence of Sri Guru Granth Sahib. Child was given in adoption willingly by the natural parents and was taken in adoption by the adoptive mother through her Attorney with the intention of transferring the child from the family of its birth. Adoption made was a valid adoption and the finding recorded to the contrary in order, Annexure P-1, cannot be sustained. Respondents have themselves admitted that on a subsequent advice given by the Law Ministry, it has been clarified that adoption could be made "under the authority" given by the adoptive parents. The ground taken by the respondents now that the passport cannot be issued to the petitioner because of there marriage of the adoptive mother on 16-11-1994 is also not sustainable. Adoption took place on 2-3-1990 and for all intents and purposes, adoption would be deemed to have been completed on that date. On that date, adoptive mother had the capacity to take the child in adoption. Adoption cannot be invalidate because of the subsequent marriage of the adoptive mother, Petitioner became the daughter of the adoptive mother on the date she was taken in adoption and is, thus, entitled to a new passport with the name of her adoptive mother inserted in it.

8. For the reasons recorded above, we accept this writ petition and direct the respondents to issue the passport applied for by the petitioner within two months of the receipt/production of a certified copy of this order.

9. Petition allowed.