
(2015) 06 KL CK 0073
In the High Court Of Kerala
Case No : W.A. Nos. 900 and 908 of 2015

Prashanth Sathyavan

APPELLANT

Vs

Sindhu George and Others

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Citizenship Act, 1955 — Section 3
Passports Act, 1967 — Section 6(2)(a)

Citation : (2015) 06 KL CK 0073

Hon'ble Judges : Ashok Bhushan, C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : G. Sabastian, Sanjay Thampi, R. Manoj, P.P. Blessy Mol and Lekha Sankar, for the Appellant; A. Rajasimhan, Advocates for the Respondent

Judgement

A.M. Shaffique, J.

1. W.A. No. 908/2015 is filed by the respondents in the writ petition challenging the judgment dated 10/04/2015 in W.P.C. No. 35380/2014. W.A. No. 900/2015 is filed by a third party against the very same judgment. The short facts shown in these writ appeals are as under:

1st respondent in these writ appeals, who is hereinafter referred to as the petitioner, had filed the writ petition seeking for a direction to consider Ext.P9 application submitted by her before the Passport Officer, seeking a passport to her minor daughter. She contended that she is an overseas Indian citizen born to Indian parents in United States. She came to India at the age of 10 years. She had relationship with one Mr. Prashanth Sathyavan, who is the appellant in W.A. No. 900/2015 and a child was born to them. They were living together for some time and later Sri. Prashanth Sathyavan deserted her. She obtained a job in U.S and wants to take her child to U.S along with her. She applied for a passport for her minor daughter which was denied by the Passport Officer and therefore she has approached this Court seeking for appropriate directions.

2. Though a statement was filed by the Assistant Solicitor General of India on behalf of respondents 1 and 2 in the writ petition stating that in order to qualify the child to be a citizen of India, the child should have at least one parent as the citizen of India. Since there was no material to indicate that Sri. Prashanth Sathyavan, who claims to have been living with the petitioner, was a citizen of India, passport could not have been issued. No material was produced to establish the citizenship of the child's father though an opportunity was granted to the petitioner. Under such circumstances, it was not possible for the Passport Officer to issue the passport.

3. The learned Single Judge, after considering the rival contentions, observed that since it is not disputed that Sri. Prashanth Sathyavan is a native of Bangalore, there is no reason to refuse the passport in favour of the petitioner. Hence direction was issued to take on record Ext.P9 application to issue Indian passport to the petitioner's minor daughter Archana Prashanth within a period of two weeks.

4. It is, impugning the aforesaid judgment, Union of India has come up with W.A. No. 908/2015. The learned ASGI submits that, in the absence of any material to indicate that one of the parents of the child was an Indian citizen, in view of Section 3 of the Citizenship Act, no passport could have issued to Archana Prashanth. This aspect of the matter is completely ignored by the learned Single Judge especially in view of Section 6(2)(a) of the Passport Act, 1967.

5. Sri. Prashanth Sathyavan also has filed an appeal inter alia stating that he was not made a party to the proceedings before the learned Single Judge. According to him, there was a legal marriage between the petitioner and Sri. Prashanth Sathyavan which was not disclosed to the Passport Officer and the documents produced along with the passport application stating that they were only living together and that he had deserted the petitioner is absolutely baseless. Further, it is contended that he had already approached the Family Court seeking custody of the minor child. Application for interim custody has been rejected by the Family Court against which the appellant had preferred an appeal which is pending before this Court.

6. Learned counsel appearing for the petitioner further submits that Family Court had granted custody of the child in her favour after taking into consideration all the factual and legal issues involved in the matter. She had already obtained employment in U.S and unless the child is taken along with her to U.S, the child will be left without any parent. According to the petitioner, father of the child had deserted them and he has no intention to take care of them in any manner.

7. Having regard to the controversy involved in the matter, we are only concerned with the issuance of passport in the name of the minor child. It is now admitted by the petitioner as well as the appellant in W.A. No. 900/2015 that the child is born while they were living together. Though there were disputes regarding existence of marriage between them, the fact that the child was born

while they were in co-habitation, is not disputed. Father of the child, being an Indian citizen, it could as well be stated that child can be issued with Indian Passport. To that extent, the Passport Officer may not have any objection. However, it is pointed out that certain materials relating to the relationship between the petitioner and Sri. Prashanth Sathyavan have not been disclosed to the Passport Officer. According to Sri. Prashanth Sathyavan, the affidavits filed along with the application is not correct and is not in accordance with the statutory provisions. Whatever that might be, we are of the view that the Passport Officer will have to hear the petitioner as well as Sri. Prashanth Sathyavan and take appropriate decision in the matter relating to issuance of passport to the minor child.

8. As far as the custody of the child is concerned, the child is with the petitioner and if the Family Court has granted custody to the petitioner, it is always open for the petitioner to take appropriate steps in the welfare of the child. Though it is stated that an appeal is pending before this Court against the order of custody passed by the Family Court, we do not want to express any opinion on the respective rights of the parties regarding custody of the child. It will always depend upon the orders of the Family Court/Appellate Court in the matter. Under such circumstances, we are of the view that these appeals can be disposed of modifying the judgment of the learned Single Judge as follows:

- i) Petitioner as well as Sri. Prashanth Sathyavan shall appear before the Passport Officer on 10/06/2015 at 11 a.m.
- ii) Passport Officer shall hear the parties/representations, if any, obtain appropriate documents and then pass appropriate orders within a further period of one week.
- iii) Regarding custody of the child, parties will be bound by the decision of the Family Court/Appellate Court.