
(2012) 04 MAD CK 0165

In the Madras High Court

Case No : Writ Petition No. 9221 of 2012

P.V. Balaji

APPELLANT

Vs

Registrar of Birth and Death

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 15

Citation : AIR 2013 Mad 61

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : Udayakumar, for M/s. M. Christopher, for the Appellant; R. Sreedhar, Govt. Advocate (P), for the Respondent

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—This writ petition is filed praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order made in No. 100/P-Na/ P.E.A./11AA/12, dated 1.3.2012 and quash the same and consequently direct the respondent to make appropriate inquiry as contemplated in the Registration of Births and Death Act, 1969 and Rules. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

2. The respondent refused to accept the petitioner's plea for changing the name of the father of the child Shreyas in the Birth Certificate from that of Venkatesan to P.V. Balaji, the petitioner herein. The reason given by the authority while declining such a claim is on the ground that the petitioner has to get appropriate order from the competent Court. The document, viz., Birth Certificate in which the correction is sought for, bears the name of one Venkatesan as the father of the child Shreyas and that Certificate is registered on 15.2.2005. This is an admitted fact that Shreyas was born to Revathy after she married Venkatesan.

3. The plea of the petitioner is that in the Guardian and Wards Original Petition

No. 14 of 2011 which is pending before the District Court, Erode, there is material to substantiate his claim. In the petition filed before the District Court for custody of the child Shreyas, the petitioner states that he is the father of the minor child Shreyas aged about 6 years. Earlier, the respondent in the O.P., namely, one Ms. P. Revathy, the divorcee, was married to one Venkatesan, in the year 2003. It is alleged that Revathy developed intimacy with the petitioner P.V. Balaji and both of them lived together at Kanchipuram, Pondicherry and lastly at Erode. On account of such cohabitation between the petitioner and Revathy, a male child was born on 28.1.2005. The child was named Shreyas.

4. The petitioner further states that he is the biological father of the child Shreyas. The said Revathy with a mala fide intention, has given the father's name of the child Shreyas as Venkatesan instead of Balaji, the petitioner. According to the petitioner, the fact is that Revathy and the said Venkatesan did not live together as husband and wife. The mother of the child is Revathy, but the biological father is the petitioner and not Venkatesan. Earlier, the said Revathy filed HMOP No. 54 of 2007 before the Sub-Court, Bhavani, praying for divorce and as a result, the marriage between the said Venkatesan and Revathy was dissolved by the judgment dated 14.9.2009. Revathy is working as a School Teacher in Corporation Primary School, Cutchery Street, Erode. In the School Service Register, the said Revathy has given her husband's name as Balaji, the petitioner herein. The petitioner, Revathy and the minor child Shreyas, lastly lived together at 302-1, Ashok Nagar, Railway Colony Post, Erode for some years. Due to some misunderstanding between the petitioner and Revathy, Revathy left the company of the petitioner and is living separately from April, 2011. When the minor child was in Abacus Summer Training Class at Vision Academy, Revathy without the knowledge of the petitioner, took away the minor child by giving false information. The minor child is in the custody of the said Revathy and hence, he filed the above GWOP for custody of the child on the plea that the petitioner is the biological father.

5. In the counter-affidavit filed in G.W.O.P. No. 14 of 2011 for custody of child, the said Revathy had admitted that the minor child Shreyas is her son born out of relationship with the petitioner and that the petitioner is the father. On this premise, the petitioner herein applied for change of name of the father in the Birth Certificate and the same was refused and hence, the present writ petition.

6. There is no dispute that the child Shreyas was born in January, 2005, when the marriage between Revathy and Venkatesan was subsisting. It was another issue that it dissolved later in September, 2009. Thereafter, in September, 2011, the petitioner filed GWOP No. 14 of 2011 for custody of child Shreyas claiming to be the father. From 2005, when the child was born, the petitioner has not taken any steps to prove that he is the biological father of the child Shreyas. It is based on the averment made by Revathy in the counter-affidavit to the GWOP No. 14 of 2011 that he is making his claim as biological father and consequently wants the name of the father in the Birth Certificate to be changed. That Revathy is the

mother, who gave birth to the child Shreyas in January, 2005, does not appear to be controversial. The birth record was registered recording the name of the father as Venkatesan to the knowledge of the mother Revathy. Even after divorce, she did not take any step to establish that Venkatesan is not the biological father of the child Shreyas. Surprisingly, in a petition filed for custody of a child by the petitioner, who is a third party, insofar as the child is concerned, the mother states in the counter-affidavit that the biological father is P.V. Balaji and not Venkatesan. Paragraph 8 of the counter-affidavit filed by the mother in G.W.O.P. No. 14 of 2011 on the file of the Principal District Court, Erode, reads as follows:

8. The respondent submits that the minor child Shreyas is the son of the respondent and the petitioner is the father and he is aged about 6 years now. The petitioner conveniently and cunningly suppressed the circumstances under which the respondent was lured and circumvented by the petitioner when the petitioner was living at Kanchipuram in the same street. The respondent was forced to marry the son of paternal aunt namely Venkatesan, when she was the minor at the age of 16 during her school hood. In the midst of death-bed of mother of the said Venkatesan who is none other than the elder sister of father of this respondent. Since the respondent was very much curious and desires to continue the studies, she did not lead a married life with Venkatesan and the respondent continued her studies till the completion of Teacher Training Course with the help of parents. Taking advantage of the loneliness of the respondent, the petitioner unduly influenced the respondent while going to the temple, shopping and also by conversing through telephone.

(extracted as such)

This is stated nearly six years after the child is born. The mere statement by the mother stating that one or other person is the father cannot be the basis for changing the name of the father of the child as entered in the Birth Register and Birth Certificate. The sanctity attached to the name given in the Birth Certificate cannot be altered at the whims and fancies of the mother or the so-called father. It will amount to depriving and interfering with the rights of the child which is universally accepted.

7. Articles 7, 8, 16 and 36 of the United Nations' Convention on Rights of the Child, 1959, endorsed by Republic of India on 11th December, 1992, state as follows:

Article 7:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international

instruments in this field, in particular where the child would otherwise be stateless.

Article 8:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to reestablishing speedily his or her identity.

Article 16:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 36:

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

8. Therefore, the universally applied doctrine which has been adopted by India has to be applied and the rights of the child to preserve his or her identity and name has to be protected by law by removing unlawful interference.

9. In the case on hand, merely because, the mother has stated that the child is born to the present petitioner, it does not mean that the petitioner has got a right to change the name of the child. A mere statement by the mother contrary to the birth record without disproving the paternity of the child by procedure prescribed by law, cannot be the basis for change of name. Such a loose statement either by the mother or any other person will offend the right of the child and it will amount to desecrating the birth of the child. No one has the rights to affect the rights of the innocent child by offending its paternity. If the paternity of the child is doubted, it causes a permanent scar on the child throughout its lifetime. It will be a reason for ridicule and will affect the child as it grows. Such reckless statements made without basis or substance are unpardonable and if the mother is also the perpetrator of such baseless statement as alleged by the petitioner herein, it is an insult to motherhood. If the statement of the petitioner is correct, then, such a mother, who offends the birth of a child stating that it born out of extra-marital relationship, exposes her deviant character and her family upbringing. If the change of name is effected at

the whims and fancies of one or other party, it will severely affect the child and its future. It will confuse the child as to who is the biological father. Such acts offend the right of the child, its identity and its dignity.

10. Section 15 of the Registration of Births and Deaths Act, 1969 reads as follows:--

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.

11. Section 15 of the Registration of Births and Death Act, 1969 provides the procedure for correction of the entry of birth or the death if it is erroneous in form or substance, or has been fraudulently or improperly made. In the present case, the petitioner has not established that the entry in the Birth Certificate relating to the father is erroneous in form or substance or has been fraudulently or improperly made. Mere statement by mother cannot be the basis for correction of entry. It will be contrary to the above-stated provisions. Such a reckless statement can be made by any person as is done in the present case without realising the consequence. If such a statement is to be accepted, then it is possible that the mother, may thereafter, reverse her stand and state that the petitioner is also not the father. In such circumstances, great caution is required. Merely on the basis of an unsubstantiated and baseless statement, the change of name of the father of the child cannot be considered and it was rightly rejected by the authority.

12. The plea raised by the petitioner to change the father's name of the child contrary to the Birth Certificate appears to be totally without any basis and perverse. No provisions of law or valid legal document has been shown by the petitioner or his counsel to make such a claim. In such view of the matter, this writ petition deserves to be dismissed as totally misconceived. It is an unwarranted exercise affecting the right of the child and amounts to unlawful interference contrary to law. The Court while rejecting the plea is aware of its duty to protect the rights of the innocent child. The order passed by the authority is justified and there is no error of law. Finding no merits, this writ petition is dismissed. No costs.