
(2002) 02 AP CK 0052
In the Andhra Pradesh High Court
Case No : C.M.A. No. 340 of 2002

Shamlal	Vs	APPELLANT
Mandal Revenue Officer and Others		RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Guardians and Wards Act, 1890 — Section 10, 11, 12, 13, 14

Citation : (2002) 02 AP CK 0052

Hon'ble Judges : Ramesh Madhav Bapat, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : M.V. Durga Prasad, for the Appellant; P. Venugopal, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal by the State of Andhra Pradesh represented by the Director of Women and Child Welfare, Hyderabad. The appellant was aggrieved by the order passed by the Family Court, Hyderabad in O.P.No.781 of 2001 ordering the minor Baby ZULEIKA be given in adoption to the petitioners 2 and 3 therein.
2. It appears from the record that O.P.No.781 of 2001 was filed by three petitioners. The first petitioner is the Guild of Service (Seva Samajam) Balika Nilayam, having its Registered Office at Hyderabad. The petitioners 2 and 3 are the adoptive parents of the minor Baby ZULEIKA.
3. It was stated in the Original Petition that the first petitioner is a Registered Society-cum-Voluntary Organization under APTA Societies Registration Act and it is also recognised by the Government of India. The first petitioner is the agency for processing in country and inter-country adoptions of Indian children. The proposed adoptive parents i.e., petitioners 2 and 3 represented by the first petitioner as their G.P.A. Holder filed a petition under sections 7 - 26 of the Guardians and Wards Act, 1890. With the averments in the petition, the 1st petitioner is taking up the work of the country and inter-country adoptions as

part of its social service and they are processing the agencies for inter country adoptions and forwarding the papers concerning the proposed adoption of the child. It is further averred that the 2nd petitioner is working as Office Manager Action Battery Whole Sales Inc., and his wife is working as Customer Services and Accounting Department and their annual income is US \$ 122,500 and they have no biological children due to infertility and therefore they wanted to adopt the child. It was further stated in the petition that the petitioners 2 and 3 are physically, financially, socially and health wise are fit to adopt the child. After verification of the documents relating to the child, the child was handed over by the natural mother to Precious Moments Abode of Love, Hyderabad and later transferred to ICSW and the child was in the custody of ICSW till she was rescued and placed in Sishu Vihar by the respondent-appellant herein and the child thereafter was transferred to the first petitioner society from Sishu Vihar into its legal custody. Petitioners 2 and 3 decided to adopt the child in their custody in U.S.A and that on receiving of the documents forwarded by the foreign agency to the first petitioner society having verified the documents relating to the petitioners 2 and 3 on the reports and other papers relating to the minor child confirmed that the child required immediate guardianship. The petitioners 2 and 3 are agreeable to act as guardians of the minor child and to adopt the child by following procedure of law and that the request of the petitioners 2 and 3 was confirmed by the first petitioner as genuine and proper.

4. The respondent-appellant herein ie,. State of Andhra Pradesh represented by the Director, Women Development and Child Welfare Department filed a counter. In the counter it is stated by the respondent-appellant herein that the State of Andhra Pradesh had taken steps to trace out the biological parents of the minor child herein by giving paper publication and after waiting for one month, the Government of Andhra Pradesh declared that the child was abandoned, purely destitute and legally free for adoption.

5. It is further stated that since the inter country adoptions are regulated by CARA and in view of the fact that no objection certificate was given by them prior to issuance of G.O.Ms.No.16/2001 by the Government of Andhra Pradesh and thus it was stated by the respondent-appellant herein that the State of Andhra Pradesh has no objection in giving the child in adoption to the petitioners 2 and 3.

6. It is further stated in the counter affidavit that the State of Andhra Pradesh submitted a report by return of the documents has strongly recommended the case for permission to the guardianship. Sishu Vihar handed over the child to the first petitioner herein for processing the case of adoption by petitioners 2 and 3 .

7. The first petitioner"s society social worker was examined as P.W.1 and they relied upon Exs.A-1 to A-46. P.W.1 is also questioned by the trial Court in considering whether the prayer in the petition is in the welfare of the child. It appears from the record that on behalf of the respondents, R.W.1 was examined and they also relied upon Exs.R-1 to R-4.

8. Having considered the oral and documentary evidence on record, the Family Court came to the conclusion that the adoption is in the interest of the child and the petition was allowed appointing the petitioners 2 and 3 as guardians of the minor Baby ZULEIKA to take the child to their country and adopt the child on the following conditions.

1) The petitioner Nos.2 and 3 who sought for guardianship to adopt the child are appointed as guardians and they are entitled for custody of the person of minor Baby ZULEIKA by performing them to take the child to their country in U.S.A and to adopt the child as per the laws of the land.

2) After taking custody of the child to their country, the petitioner Nos.2 and 3 and 1st petitioner also to see in so complying by petitioner Nos.2 and 3 that they shall send the progress reports of the minor child Baby ZULEIKA to the placement agency and others concerned quarterly in the 1st two years and half yearly in the next ten years and subsequently from time to time as per the rules prevailing in India in this regard from time to time and also as when required later by the Court if necessary.

3) The petitioner Nos.2 and 3 shall produce the child before the Court or such other authority as being directed and abide by such conditions as and when given if the ends of the justice require and necessary to give such a direction in the welfare of the child in future.

4) The petitioner Nos.2 and 3 shall treat the child for all purposes as their biological child and shall not use the child as servant-maid or for any commercial or other purposes.

5) The petitioner Nos.2 and 3 and the foreign agency shall bound by and follow the guidelines of the Apex Court in Laxmikanth Pandey cases and revised guidelines of the Ministry of Welfare, Government of India 1995 and further guidelines if any given or being given and any guidelines given by the Government of Andhra Pradesh, including GO 16 and those of Government of India in this regard and any breach of it result in their liability for legal recourse.

6) The petitioner Nos.2 and 3 are directed to execute a bond in favour of the placement agency and the placement agency in turn to obtain bond from the sponsoring child welfare agency as per the guidelines of the Apex Court and Ministry of Welfare, Government of India.

7) The minor child acquires the same status as natural born child of petitioner Nos.2 and 3 and as of within their wedlock, including with the same rights of inheritance succession and the same nationality of the petitioner Nos.2 and 3.

8) The Foreign Agency in view of its undertaking given to the Court while processing the case in India, if for any reason the child is not being legally adopted within two years from this date by petitioner Nos.2 and 3 it shall immediately withdraw the child from the custody of the petitioner Nos.2 and 3 and keep the child in its custody and care and find out new adoptive parents for

placement of the child which is fit to the welfare of the child in adoption as soon as possible and submit the report in this regard if any to the Court and to the placement agency and all concerned including to the CARA under Ministry of Welfare Government of India."

9. After the order was passed, the State of Andhra Pradesh alleged to have received some information and they filed the appeal for stopping the adoption.

10. The learned counsel Mr. Gopal G. Naik appearing on behalf of the appellant herein submitted at the Bar that the adoptive mother suffers from a disease known as "CROHN'S" and therefore the adoptive mother is not fit for taking the child in adoption. It was further submitted by the learned counsel that the order of adoption has to be made in the interest of the child and received the minor child. If the mother is suffering from that disease, she will not be able to take care of the child properly.

11. The learned counsel for the appellant herein further submitted that the home study papers were not placed before the Family Court when the impugned order was passed. It was further submitted by the learned counsel that without referring the home study papers by the Family Court, the impugned order came to be passed.

12. The learned counsel appearing for the respondents 2 and 3 herein submitted at the Bar that the fear raised by the learned counsel for the appellant herein is totally imaginary and it is nothing to do with the welfare of the child. The learned counsel further submitted that "CROHN'S" disease is a chronic inflammatory process primarily involving the intestinal tract. Although it may involve any part of the digestive tract from the mouth to the anus, it most commonly affects the last part of the small intestines.

13. It was brought to our notice a certificate issued by the University of Minnesota dated 11-1-2002, who had examined the adoptive mother and issued the certificate, which reads as under:

TO WHOM IT MAY CONCERN:

RE: Angelique Hatch

The purpose of this letter is to verify the current health status of Ms. Angelique Hatch.

I have been closely associated with Angelique Hatch for many years. During this time, she has been successfully treated for Crohn's disease. In her case, this was a mild digestive disorder and never life threatening. This disorder, which was diagnosed here in the Department of Pediatrics at the University of Minnesota, began 10 years ago and is now in complete remission. Her medication (Pentasa) was discontinued 14 months ago.

Ms. Hatch is in no way compromised. Her health is excellent. She is a fully active, productive, young woman who is vibrant and energetic. I can completely

verify and assure your organisation that Ms. Hatch will in no way have any health issues that would interfere with her ability to be a wonderfully capable mother.

Yours sincerely,

Sd.xxxx xx Alfred J.Fish, M.D. Professor of Pediatrics."

14. By reading the certificate in respect of the adoptive mother, this Court has come to the conclusion that the disease suffered by the adoptive mother will not come in the way of the health of the child and it will not affect the progress of the child.

15. The second contention raised by the appellant herein that the home study papers were not placed before the Family Court when the impugned order was passed. While rebutting the aforesaid arguments, the learned counsel for the respondents 2 and 3 herein submitted that the home study papers were shown to the Family Court Judge, which may be on record. It was further submitted by the learned counsel that the counter-affidavit filed by the respondent-appellant herein in Original Petition shows that the respondent-appellant herein had studied the home study papers properly and they had filed the counter giving no objection for adoption. The counter filed by the respondent-appellant herein in the Original Petition was taken into consideration by the Family Court and the impugned order is passed.

16. The counter specifically shows that the respondent-appellant herein had studied the home study papers and they had given no objection in giving the child in adoption to the adoptive parents, there was nothing wrong on the part of the Family Court to believe the counter and to pass the order impugned.

17. This Court is in agreement with the submission made by the learned counsel for the respondents 2 and 3 herein (original petitioners 2 and 3 in the O.P.) and this Court has come to the conclusion that the fear raised by the appellant herein is totally illusive.

18. The learned counsel for the respondents 2 and 3 herein relied upon a ruling reported in Indian Council Social Welfare and Others Vs. State of A.P. and Others, in which the Hon"ble Apex Court was pleased to hold in para (5) as under:

"It is necessary to note that before a guardianship certificate is issued by the Family Court or the District Court concerned, a letter of relinquishment, VCA clearance, no objection certificate from CARA and other relevant documents such as the home study of the proposed guardians, no objection certificate from the agency which has scrutinised the application of the proposed foreign guardians, as also approval from the scrutinizing agency in India who scrutinises these applications (in the case of the State of Andhra Pradesh this scrutinising agency is the Indian Counsel of Child Welfare) are required. Thereafter the Court decides whether the guardianship should be granted or not. In case there are any objections in respect of any proposed guardianship application, the same can be and are usually raised by the appropriate authority before the Family Court/

District Court concerned."

19. All the procedures and formalities as laid down by the Apex Court, as stated above, have been complied with and now the appeal is filed with some imaginary grounds without any substance.

20. Therefore, this Court feels that there is no substance in the appeal. Hence, the appeal is accordingly dismissed. No costs.