

(2010) 09 MAD CK 0146

In the Madras High Court

Case No : Writ Petition No. 7622 of 2010

Smruthi, rep. by her father and natural guardian R.
Rangarajan

APPELLANT

Vs

Regional Passport Officer, Regional Passport Office and
Another

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Citation : (2011) 1 MLJ 1125

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : M. Rajamanickam, for the Appellant; R. Murali, CGC, for the Respondent

Judgement

K.B.K. Vasuki, J.—Though the counter is duly filed on behalf of the first Respondent/the Regional Passport Officer, there is no representation on behalf of the second Respondent.

2. Heard the learned Counsel for the Petitioner. The averments raised in the writ petition and in the counter filed by the first Respondent are perused.

3. The guardian of the minor Petitioner has come forward with this writ petition for issuing appropriate direction to the first Respondent to issue

Passport to the Petitioner by duly considering the Petitioner's application, dated 5.4.2010, without insisting for the consent of the second

Respondent, Ms. Nithya/mother of the minor Petitioner.

4. The brief facts relevant for consideration herein are as follows:

(i) The second Respondent and Mr. Rangarajan, who filed this writ petition on behalf of the minor, got married on 18.4.1990 and the second

Respondent gave birth to two children out of the wedlock and they lived together til 1998 and misunderstanding arose between the parties during

1999, resulting in petition for divorce, on mutual consent, in F.C.O.P. No. 1896 of 1999 and the same was disposed of on 19.7.2000, by granting

divorce on mutual consent and the parties have also agreed that the children shall be in the custody of the father with the visiting right given to the

mother who waived right of maintenance from the husband. Thereafter, the husband and wife started living separately and the father continues to

keep the children who are daughters aged 15 years and 12 years and are school going in his custody. According to the guardian/father, the mother

has after the divorce not taken any steps to visit the children and her whereabouts is also not known to the children and the natural guardian/father

is alone shown as guardian of the children in their school records. While the children have been in the custody of the father, the father obtained

passport to the minor children and used to, after getting due visa, take the children to abroad to his relatives house, during every summer holidays

and the contention so raised by the Petitioner is supported by the visa documents enclosed at pages 10 to 16 of the typed set of papers. The

father/guardian applied and got the passport for the minor Petitioner during 2005 and the validity of the same expired on 11.3.2010. Hence, father

applied for renewal of passport to the minor Petitioner with an Mention to take the children to Singapore during summer holidays to his relatives

house. However, the first Respondent herein, refused to issue the passport on the ground that the mother has got visiting right and the consent of

the mother is hence necessary for issuing the renewal of the passport.

(ii) According to the Petitioner, the whereabouts of the mother is not known to the father and she never cared for the children and hence getting her

consent for renewing the passport is but practically not possible and insisting for the consent of the mother that too for renewal of the passport is

likely to cause prejudice to the minor Petitioner.

5. In this case, it is not in dispute that the passport is issued to the Minor Petitioner, during 2005, much after the decree for divorce granted, during

2000 and the same is issued without the consent of the mother. The consent of the mother is insisted only for the renewal of the passport. The

same is evident from the endorsement made by the authority concerned in the

passport application enclosed at page 20 of the typed set of papers.

The perusal of the endorsement reveals that original endorsement, made was ""mother has visiting right, may call for consent of the mother"".

Thereafter, the second endorsement made was ""Applicants mother not signed, but she enclosed relevant SA for proof. Please verify for

acceptance"". The 3rd endorsement made was ""Call for Annexure-G from Magistrate"".

6. In this connection, the learned Counsel for the Petitioner drew the attention of this Court the relevant rules u/s IV, which prescribes the nature of

the documents to be enclosed along with the passport application. The perusal of the same reveals that one of the annexures attached to the

application is as follows:

Ordinarily the consent of both parents is required for issue of a passport to a minor (below 18 years of age). However, if it is absolutely not

possible due to any reason, the parent applying for a passport for his/her minor child may submit an affidavit (Annexure ""G"") and based on the

same passport application will be processed.

Annexure-G Declaration u/s 5, is as follows:

ANNEXURE ""G

DECLARATION OF APPLICANT PARENT OF GUARDIAN IF PASSPORT IS FOR MINOR (one parent not given consent): IN THE

FORM OF A SWORN AFFIDAVIT BEFORE JUDICIAL MAGISTRATE ON NON-JUDICIAL STAMP PAPER

I/We..... solemnly declare and affirms as follows:

(Name of the parent/guardian applying for passport)

1. That I/We am/are the mother/father/parents/guardian of.....who is a minor child and on whose behalf (Name of the minor child)

2. Signature/Consent of Mr. /Ms.who is father/mother/parents (Name of the father/mother) of the child has not been obtained

by me for the following reasons:

.....

3. That I/We only am/are taking care ofhe/she is exclusively in my physical custody. (Name of the minor child)

4. I/We also affirm that in the case of a Court case arising due to issue of a

passport to the minor child.....

(Name of the minor child)

I/We would be soleJy responsible for defending the case and not the Passport Issuing Authority.

Date.....

Signature & address of the parent(s)/guardian(s) applying for the passport

The relevant clause contained in the Annexure-G would reveal that though ordinarily consent of both parents are necessary for issue of passport

for minor, below the age of 18 years, if applying, parent is not able to get the consent of other parent, due to any sufficient reason, then applying

parent would submit the affidavit Annexure-G to the effect that he has been taking care of the child, who is exclusively in his custody and in case of

any Court case arising due to issue of passport to the minor child she or he would be solely responsible for defending the case and not the passport

authority and based on the same, passport application for minor child will be processed. When such an undertaking given by the applying parent it

satisfies the statutory requirement.

7. Whereas the action of the first Respondent in insisting for the consent tetter from the mother, who has till date taken no care or cared for the

welfare of the children is absolutely contrary to rules and is without jurisdiction.

8. In the result, the father guardian is directed to submit Annexure-G within two weeks from the date of receipt of the copy of this order and the

first Respondent is in that event, directed to process the passport application if it is otherwise in order, without insisting for the consent of the

mother within four weeks thereafter. The writ petition is ordered accordingly. No costs.