

(2012) 09 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No. 18611 of 2012

Sri Krishnanugraha (A Unit of Sri Krishna Charitable Trust)
(Regd.)

APPELLANT

Vs

The Commissioner The Registrar of Birth And Death Udupi
Municipality, Mr. Umesh Borkar and Mrs. Shobha

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 41
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 33, 33(5)

Citation : AIR 2013 Kar 62 : (2013) 2 AKR 1 : (2013) 1 Crimes 618 : (2013) 1
KCCR 870

Hon'ble Judges : Mohan Shantana Goudar, J

Bench : Single Bench

Advocate : Pramod N. Kathavi, for the Appellant; K. Krishna, Aga for R1; R2 and
R3 are Served, for the Respondent

Final Decision : Allowed

Judgement

Mohan Shantana Goudar, J.—By the impugned order, the Court below has dismissed the Misc. cases filed by the petitioners herein praying for permission to adopt the children u/s 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter called as "the Act" for brevity). Learned District Judge has proceeded on the basis that the Juvenile Justice Board has got jurisdiction for granting permission to adopt under the provisions of the Act and not the Court. While concluding so, the District Judge has relied upon the unamended provisions of the Act and the Rules framed thereunder. Unfortunately, the District Judge has not taken into consideration the amended provisions of the Act as also the Central Rules and the Karnataka State Rules on the question. The provisions relating to adoption prior to Amendment Act No. 33 of 2006 had empowered the Board to allow the child to be given in adoption; but section 41(6) of the Act was amended with effect from 22.08.2006 by Act No. 33/2006. After the amendment, the provisions of Section 41(6) reads thus:

41. Adoption.-....

41(6) The Court may allow a child to be given in adoption-

- a) to a person irrespective of marital status or;
- b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or
- c) to childless couples.

From the amended provisions of the Act it is amply clear that the Court may allow a child to be given in adoption. Consequently, after the amendment, the Board has no jurisdiction to allow the child to be adopted under the Act.

2. The Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter called as the "Rules 2007" for brevity) are the rules framed by the Central Government. Rule 33 of the Rules 2007 deals with adoption. The relevant rule is Rule 33(5) of the Rules 2007, which reads thus:

Rule 33(5)- For the purposes of section 41 of the Act, "Court" implies a civil court, which has jurisdiction in matters of adoption and guardianship and may include the court of the district judge, family courts and city civil court.

3. It is also relevant to note that Karnataka State has formulated its own rules for the purpose of implementing the Act. Those rules are called as Juvenile Justice (Care & Protection of Children) Karnataka Rules, 2010 (hereinafter called as the Karnataka Rules, 2010"). Those rules have come into effect on 26.11.2010. The Karnataka Rules, 2010 are framed in exercise of the powers conferred by section 68 of the Act. Rule 35 of the Karnataka Rules is relating to adoption. The relevant sub-rule is Rule 35(12) which reads thus:

Rule 35(12)- For the purposes of section 41 of the Act, "Court" implies a civil court, which has jurisdiction in matters of adoption and guardianship. This could include the court of the district judge, family courts, city civil court and High Court.

4. It is needless to observe that by virtue of Rule 99 of the Karnataka Rules 2010, earlier rules i.e. Juvenile Justice (Care & Protection of Children) Karnataka Rules, 2002 are repealed. Thus, it is clear that Karnataka Rules of 2002 no more exist after 26.11.2010.

5. From the aforementioned provisions, it is amply clear that amended Act and amended Rules (both Central and State) govern the field of adoption in such matters. Under the amended Act as aforementioned, the Court has jurisdiction to allow the child to be given in adoption and not the Board. Rule 33(5) of the Central Rules, 2007 specifies that for the purpose of section 41 of the Act, the Court implies the Civil Court and may include a Court of the District Judge, Family Court and the City Civil Court. So also, Rule 35(12) of the Karnataka Rules, 2010 also specifies that for the purpose of section 41 of the Act, the Court

implies Civil Court which has the jurisdiction in the matters of adoption and guardianship, including the Court of District Judge, Family Court, City Civil court and the High Court. Hence, it is more than clear that it is the Court which has got jurisdiction to decide as to whether the child should be permitted to be adopted or not. The Board has no jurisdiction to decide such matters. Since the amended provisions are overlooked by the District Judge, the illegality has crept in, and therefore, the impugned order cannot be sustained. Accordingly, the same is quashed. The District Judge is directed to decide Misc. case Nos. 25/2011, 27/2011, 28/2011, 31/2011, 32/2011 and 35/2011 on merits and in accordance with law. All other questions are kept open to be urged.

Writ Petitions are allowed accordingly. The District court is directed to decide the above misc. cases as early as possible but not later than the outer limit of four months from the date of receipt of a copy of this order.