

(2015) 07 MAD CK 0353
In the Madras High Court
Case No : Writ Petition No. 14507 of 2015

V. Mathi Nithya

APPELLANT

Vs

The Regional Passport Officer and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Citation : (2015) 07 MAD CK 0353

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : K. Ravi Anantha Padmanabhan, for the Appellant; S. Meenakumari, Central Govt. SC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

M. Sathyanarayanan, J—By consent, the Writ Petition is taken up for final disposal.

2. The mother of the minor petitioner originally married Thiru G.Krishnan and, out of the said wedlock, the petitioner was born and, on account of difference of opinion, their marriage ended in divorce in O.P. No.2422 of 2010 on the file of II Additional Family Court, Chennai, by a decree, dated 27.02.2011, and the said decree has become final. It is further stated by the mother petitioner that she subsequently married M.Vinoth Kumar on 01.09.2013 and it was also registered vide certificate of marriage dated 04.11.2013. She would also state that Aadhaar Card was also issued, showing M.Vinoth Kumar, as her spouse. She applied for a passport and it was issued on 30.10.2014, showing M.Vinoth Kumar as her husband and, during the pendency of the application, she applied for change of name of the minor petitioner as V.Mathi Nithya and a gazette notification was also effected on 22.04.2015 in the Tamil Nadu Government Gazette, regarding the change of name.

3. The grievance of the petitioner is that she was called for an inquiry by the passport authorities in respect of application for issue of passport for her minor

daughter and they insisted that the biological father of the child alone shall be included in the passport and not the step-father of the child and hence she has come forward to file this Writ Petition.

4. Mr.K.Ravi Anantha Padmanabhan, learned counsel for the petitioner, has drawn the attention of this Court to the typed set of documents, and would submit that on 08.06.2015, Mr.M.Vinoth Kumar/husband of the mother petitioner, after performing Datta Homam, adopted the minor child/petitioner, and a deed of adoption also came into being to that effect. The learned counsel for the petitioner, by drawing the attention of this Court to the additional affidavit of the petitioner, would point out that the former husband of the mother of the petitioner has remarried a widow with a two year child after the decree of divorce, dated 27.02.2011, and hence there may not be any impediment for including the name of Mr.M.Vinoth Kumar as the father of the minor petitioner.

5. It is further contended by the learned counsel for the petitioner that in similar facts and circumstances, this Court, in W.P. Nos.13182 and 13217 of 2015, by a common order dated 30.04.2015, following the judgment in the case of B.S. Deepa Vs. The Regional Passport Officer(2015) 2 CTC 503 : (2015) 1 LW 943 : (2015) 2 MLJ 314 : (2015) WritLR 179 , directed the first respondent to pass appropriate orders and, accordingly, he prays for appropriate orders in this case as well.

6. Per contra, Mrs.S.Meenakumari, learned Central Government Standing Counsel, appearing for the respondents, has invited the attention of this Court to the counter affidavit of the respondents and would submit that as per Para 3.I of Chapter 8 of Passport Manual, regarding issue of change of name, some guidelines are to be followed, which are extracted as under :

a) Prescribed Deed Poll / Sworn Affidavit (As per the format in Annexure E)

b) Original Newspaper cuttings announcing the change of name published in two leading daily newspapers (one popular daily newspaper in the area of the applicant's present address and another at his permanent address) or name change Gazette notification published in the Union/State Official Gazette.

According to her, where request is made for inclusion of step parent's name in the passport, the following guidelines have been issued :

"In case of Divorce, subsequent remarriage and inclusion of step-parent's name in the passport of minor child, the name of the stepfather/stepmother cannot be written in the passport of children from the previous marriage. The relationship of the child to his/her biological parents subsists, even after divorce by parents. In such cases, the column of father or mother in the passport cannot also be left blank. Therefore, such applicants must apply with the names of their biological parents. However, if the stepfather or stepmother is appointed by a Court as legal guardian, the name of such step parent can be written as legal guardian."

She would further submit that in the light of the judgment passed in Minor

Deepa's case, the Ministry of External Affairs has been approached to incorporate suitable provisions in the Passport Manual and prays for appropriate orders.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. A perusal of the materials would disclose that the mother of the minor petitioner has obtained an ex parte decree of divorce and it has become final. As per her affidavit, her former husband also got remarried and the name of the minor petitioner was also changed as per the Tamil Nadu Government Gazette Notification, dated 22.04.2015. The mother of the minor petitioner, after divorce, got married to Mr.M.Vinoth Kumar and it was also registered. Subsequently, the said Vinoth Kumar, through a deed of adoption, has adopted the minor petitioner and in the Aadhaar Card also, his name is shown as the stepfather of the minor petitioner.

9. This Court, in the case of B.S. Deepa, referred to supra, after considering various judgments, has observed as follows :

"35. The cases of children surrendered to child care homes or abandoned by their biological parents, do not pose great difficulty. In such cases, the first identity itself is born, only when the Court passes an order approving local or inter-country adoption. Since such adoptions are now well regulated by the earliest decision of the Supreme Court in Lakshmi Kant Pandey Vs. Union of India (UOI), AIR 1984 SC 469 : (1984) 1 Crimes 542 : (1984) 1 SCALE 159 : (1984) 2 SCC 244 : (1984) 2 SCR 795 and the various guidelines issued by the Government of India, the Courts passing orders in terms of the provisions of the Guardians and Wards Act themselves issue appropriate directions to the Passport Office, to include the names of the adoptive parents in the passport issued to the child. But, as stated earlier, the children in such cases happen to be those abandoned by their biological parents. Therefore, there is no change of any discrepancy between different types of certificates. But, cases such as the one on hand, pose a lot of difficulties, as I have pointed out earlier. While the Courts are certainly obliged to take care of the immediate interests of those children by giving certain directions to the Passport Office, the Courts cannot overlook the long term needs and rights of these children. For instance, the right of a child to inherit the estate of its biological father, will get defeated by a direction to effect correction of entries in the statutory records.

36. Therefore, I am of the view that the Ministry of External Affairs is obliged to come up with innovative steps and measures to resolve problems of this nature. The Passport Manual may perhaps have to be amended suitably to incorporate additional column in the applications for the issue of passports. Apart from the columns where the names of the biological parents are to be indicated, the application form may also contain columns where the names of step-parents could be indicated, wherever applicable. This will reduce or even eliminate the

possibility of any discrepancy between the entries in the Birth Register and the School Records or other records.

37. Such a step as suggested above, will also ensure that the rights guaranteed to children under the United Nations Convention on the Rights of the Child, 1989, to which India is a signatory, are protected. While it is necessary to secure a passport for the minor daughter of the petitioner at the earliest, it is also necessary to ensure that the emergent needs do not destroy the future rights of the child. Therefore, I am of the view that the writ petition could be disposed of with certain directions, both to the Union of India and to the respondents herein, so that persons similarly placed like the petitioner are not compelled to approach the Court every time for the issue of passports.

38. In view of the above, the writ petition is disposed of with the following directions :

(1) The Ministry of External Affairs, Union of India may incorporate suitable provisions in the Passport Manual and incorporate suitable columns in the applications for the issue of passports, to enable the parties to indicate either the names of the biological parents or the names of the adoptive parents or the names of the step parents or all of them, according as the situation demands. It can be left to the will of the parties either to indicate the names of one or more of the biological parents along with the name/names of the adoptive or step parent/parents or to indicate the names of all.

(2) In so far as the case on hand is concerned, the respondents shall issue a passport to the daughter of the petitioner, by indicating the name of R.Lakshmanan as the stepfather, in the column reserved for filling up the name of the father. The respondents are directed to issue passport within four weeks, upon the petitioner's application bearing File No. MA3067806994714 dated 10.7.2014."

10. This Court, in the light of the above cited judgment and taking into consideration the facts and circumstances, directs the respondents to consider the application, dated 03.04.2015, in file No. MA1068441936115, submitted by the minor petitioner, which included the prayer to include the name of the stepfather, namely Mr.M.Vinoth Kumar, as the legal guardian in the passport, and to also effect change of name of the minor petitioner as per the Tamil Nadu Government Gazette Notification, dated 22.04.2015; and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order and inform the decision taken to the mother of the minor petitioner, namely, Tmt.C.Aishwarya, T-6, Block A, Ashok Manor, No. 6, Kannaabiran Koil Street, Pallikaranai, Chennai-600 100.

11. Writ Petition is disposed of accordingly. No costs.