

44

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 898/2009

SUJEET RANJAN

..... Petitioner

Through: Mr. Gurmeet Bindra, Advocate.

versus

U.C. SINHA & ORS

..... Respondent

Through: Mr. Neeraj Malhotra with Mr. Rahul Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

28.08.2009

%

Caveat No. 132/2009

Since the caveator has appeared, the caveat stands discharged.

C.M. No. 12107/2009

Allowed, subject to all just exceptions.

CM(M) 898/2009 & C.M. No. 12106/2009

The petitioner impugns the order dated 23.07.2009 passed by MS. Deepa Sharma, Principal Judge, Family Courts, Dwarka, New Delhi in G.S. No. 06/09 under Article 227 of the Constitution of India. By the impugned order the application filed by the petitioner under Order 1 Rule 10 CPC to seek impleadment in the aforesaid Guardianship Petition has been dismissed by the subordinate court.

Respondent nos. 1 and 2 have preferred the aforesaid Guardianship

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

2
Suit under Sections 7 and 15 of the Guardianship and Wards Act for custody of their grandson. In this petition, the paternal grandparents have been impleaded as respondent nos. 2 and 3. The petitioner, who is the paternal uncle of the minor child Master Tanish moved an application for impleadment. The foundation of that application was that the petitioner and his wife, who are in their forties, are a childless couple. They stated that they would like to adopt the child. They also claim that during the 'shradh' ceremony of the deceased parents of the minor child, the said child was given in adoption to them by conducting a religious ceremony.

Their application has been rejected by the trial court on the ground that there was no valid adoption as recognized by the Hindu Adoption and Maintenance Act.

The respondent nos. 1 and 2 have appeared on caveat, and I have heard counsel for the said respondents. Learned counsels for the respondents submits that the adoption deed set up by the petitioners is not genuine, apart from being illegal and of no effect. The said adoption deed, according to the respondents, has been created after the filing of the aforesaid petition by respondent nos. 1 and 2.

A perusal of the impugned order shows that the court has only examined the legality of the adoption deed set up by the petitioner, and upon finding the same to be of no effect rejected the application filed by the petitioner. The subordinate court has not, however, examined the claim made by the petitioner to say that the petitioner and his wife are competent

3

to adopt the minor child or to seek his guardianship.

There is no dispute that the petitioners are also competent, even independently, to seek the guardianship of the child and to also adopt the child. This being the position, in my view, the petitioner should have been impleaded as a party respondent since the petitioner is also staking a claim towards guardianship and eventual adoption of the child. For the aforesaid reasons, the impugned order is set aside and the petitioner is impleaded as a party respondent in the guardianship proceedings.

Petition stands disposed off.



VIPIN SANGHI,J

AUGUST 28, 2009
dp