

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP 39 OF 2015

Sri Sujit Datta,
son of late Jogesh Chandra Datta,
resident of Pragati Road, Krishnanagar,
ward No. 14, Agartala Municipal Council,
P.S. West Agartala, District: West Tripura,
presently residing under care of Smt. Namita Deb,
wife of Suman Deb, resident of village: Madhya Bhubanban,
P.O. Paschim Bhubanban, P.S. West Agartala,
District: West Tripura, PIN: 799002

..... Petitioner

- Vs -

- 1. Sri Arun Kumar De,**
son of late Lalit Mohan De,
- 2. Smt. Rita Karmakar (De),**
wife of Sri Arun Kumar De
-both are residing at 23, Central Road,
Amiya Sagar Par, Near Kaman Chowmuhani,
Agartala, P.S. West Agartala, District: West Tripura,
PIN: 799001

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. D. Saha, Advocate
For the respondents : Mr. T.K. Choudhury, Advocate
Date of hearing : 24.11.2015
Date of judgment & order : 14.12.2015

Whether fit for reporting :	Yes	No
	√	

JUDGMENT & ORDER

By means of this petition filed under Article 227 of the Constitution of India the petitioner who is the biological father of the minor namely Krishna Datta has challenged the order dated 16.03.2015 delivered in Civil Misc. Adoption 12 of 2014 by the District Judge, West Tripura, Agartala.

2. The respondents No. 1 and 2 filed an application under Section 7 and 8 Read with Section 10 of the Hindu Adoptions and Maintenance Act, 1956 seeking 'adoption' of the said child. The wife of the petitioner expired on 20.11.2014 leaving behind one suckling male baby i.e Krishna when he was of 9(nine) days old. As the petitioner found it difficult in taking proper care he had intention to transfer the child from the family of its birth to the family of its adoption. The respondents No. 1 and 2 are married to each other. But despite their long married life, they had no child. They offered to adopt the child to the petitioner, their biological father. On 05.12.2014 by entering into a formal agreement followed by the rituals the petitioner and the respondent No. 2 decided to approach the court of the District Judge for formalising the adoption as per the provisions of the Hindu Adoption and Maintenance Act, 1956. But a preliminary question was raised in that proceeding whether such application was maintainable or not. By the impugned order dated 27.03.2015, it has been observed that the respondents No. 1 and 2 may approach the specialized adoption agency approved by the government of Tripura to get the adoption. According to the petitioner the court below erred by asking the respondents No. 1 and 2

approach the specialized adoption agency and the Child Welfare Committee in as much as such procedure is alien to Hindu Adoption and Maintenance Act, 1956. There is no dispute that the adoption has been sought under the Hindu Adoption and Maintenance Act, 1956. Both the petitioner and the respondents are in the same boat so far the challenge against the said judgment is concerned. It is their contention that calling the child as the 'surrendered child' within the meaning of Rule 2(Q) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the court below without appreciating the relevant facts and circumstances has committed a serious error of law as well as of the jurisdiction. According to that definition, 'surrendered child' means a child who in the opinion of the committee is relinquished on account of physical, emotional and social factors beyond the control of the parent or guardian.

3. Mr. D. Saha, learned counsel appearing for the petitioner has submitted that his biological son cannot be brought within the definition of the 'surrendered child' as the child is not relinquished on account of physical, emotional and social factors beyond the control of the parent or guardian. It was a conscious decision of the petitioner for well being of the minor. The surrendered child is distinguishable and its definition, to some extent, is inflexible. As such, the observation that the minor is the surrendered child is absolutely unsustainable. Therefore, the direction of taking assistance of the specialized adoption agency and Child Welfare Committee is not at all

warranted in the case. Hence, the impugned order rearises to be interfered with.

4. At the beginning unless it is noted that the entire application which has been filed under Sections 7 and 8 read with Section 10 of the Hindu Adoption and Maintenance Act, 1956 has been decided simply on the pleadings in the application. What appears to this court is that the petitioner herein has correctly contended that his biological son cannot be treated or defined as the surrendered child. He has not surrendered him. When he was given custody for adoption the minor child was very much in the protective custody of the petitioner. While this court has observed that the biological son of the petitioner cannot be treated or defined as the surrendered child, at the same time, this court would refrain from making any further comment as to the procedure that has been followed for purpose of adoption under Hindu Adoption and Maintenance Act, 1956 inasmuch as for purpose of valid adoption the requirements of Sections 7, 9, 10 and 11 are to be strictly followed. Though there are differences of opinion between the various High Courts as regards as to the interplay of the provisions of Hindu Adoption and Maintenance Act, 1956 and the Juvenile Justice (Care and Protection of Children) Rules, 2000. But the reasoned view, according to court, is that both the acts provide two different procedures and jurisdiction. When the Juvenile Justice (Care and Protection of Children) Act, 2000 is irrespective of religion, caste and creed, but the Hindu Adoption and Maintenance Act, 1956 is for the

Hindus, which include the sacred religions as provided under Section 2 of the Hindu Adoption and Maintenance Act, 1956. Apparent on the face of record is that the impugned order has mixed up provisions of both the Acts which according to this Court, is not permissible. If some application is filed under provisions of Hindu Adoption and Maintenance Act, 1956, the said application has to be decided in accordance with the provisions there of.

5. In that premises, the impugned order is interfered with and set aside inasmuch the impugned order has been passed on the basis of the salutary provisions of the Juvenile Justice (Care and Protection of Children) Act and the Rules made thereunder. The case is remanded for adjudication on merit. The parties shall appear before the court of the District Judge on 15.01.2016. It is made clear that no further notice would be issued from the court of the District Judge, West Tripura, Agartala. The petition is therefore allowed.

JUDGE

Moumita