

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 01.12.2015

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.334 of 2015

A.Bobby Bob Kennedy

.. Appellant/Petitioner

Vs

Nil

.. Respondent/ Respondent

Prayer: This Appeal is filed under Section 47 of the Guardian and Wards Act 1980, against the decree and judgment dated 09.10.2014 made in GOP No.127 of 2014 on the file of the II Additional District Judge insofar as dismissing the petition for appointment of guardian is concerned.

For appellant : Mr.R.Singaravelan for
M/s.M.SriVidhya

JUDGMENT

Aggrieved by the judgment and decree dated 09.10.2014 made in GOP No.127 of 2014 on the file of the II Additional District Judge insofar as the appointment of guardian is concerned, the appellant has preferred the present appeal.

2. Learned counsel appearing for the appellant submitted that the appellant is the father of minor B.Tamilselvan and one Sadasivam is his maternal uncle. However, the said Sadasivam, due to strained relationship with his wife-Reena Mary @ Jayarakini, filed I.D.O.P.No.1 of 2004 on the file of the I Additional District Judge, Salem, seeking restitution of conjugal rights with his wife. But, the said petition was dismissed on 18.10.2006 for non-prosecution. While the said Sadasivam was in sound mind, he executed a Will dated 21.02.2014, attested by Notary Public, in favour of the said minor ward. Later on, the said minor ward was given adoption by the appellant to the said Sadasivam by way of adoption deed dated 01.03.2014, attested by Notary Public. Subsequently, the said adoptive father Sadasivam died on 17.04.2014. Therefore, in view of sudden death of adoptive father Sadasivam, natural father of the minor ward has filed two petitions; first petition

filed under Section 27 read with 234 of the Indian Succession Act, 1925, seeking to probate the Will dated 21.02.2014 executed by the said Sadasivam in favour of the adopted minor son; second petition filed under Sections 7 and 10 of the Guardian and Wards Act, 1980, seeking to appoint the petitioner/appellant herein as the guardian of person and properties of the minor son B.Tamilselvan. But, the learned II Additional District Judge, Salem, dismissed the petition filed under Sections 7 and 10 of the Guardian and Wards Act, 1980, stating that as per Section 6 of the Hindu Minority and Guardianship Act, the natural mother of a minor who has not completed the age of 5 years shall be ordinarily the mother and therefore, when the mother of the minor son is alive, the petitioner/appellant herein cannot seek guardianship of the minor who is aged about 2 years. Aggrieved against the said order of the Court below, the present application has been filed.

3. Learned counsel for the appellant has also brought to the notice of this Court an affidavit filed by the wife of said Sadasivam in I.A.No.583 of 2014 in Probate O.P.No.128 of 2014 refusing to accept the minor son. Relevant portion of the said affidavit is extracted hereunder:

"2. I am the legally wedded wife of the deceased Sadasivam. The minor respondent/petitioner is not the adopted son of my deceased husband. The alleged adoption is false. The minor is in no way connected with our family.

3. The respondent/petitioner has filed the petition on the basis of false averments and allegations. The alleged will is not true, valid. I am the person who has succeeded the deceased husband. The respondent/petitioner has filed the petition intentionally suppress the true successor of the deceased Sadasivam."

4. By citing the above said affidavit, learned counsel further contended that in the present case, the adoptive father Sadasivam unfortunately died on 17.04.2014 and his wife also has filed an affidavit in support of the Probate O.P.No.128 of 2014 stating that the minor son is no way connected with her family and therefore, the minor son is left orphan without anybody to take care of him. It is further submitted that after the death of the said Sadasivam, when his wife also has not come forward to take care of him, the appellant being the natural father, atleast for the purpose of taking care of him, the Court below ought not to have dismissed his application filed in G.O.P.No.127 of 2014. On this basis, he pleaded before this Court to treat the appellant as natural guardian of the minor

son, otherwise, the minor son would be left as orphan and unattended.

5. The petitioner's maternal uncle by name Sadasviam executed a Will dated 21.02.2014 attested by Notary Public in favour of his minor ward B.Tamilselvan. Later on, the said minor ward also given adoption by way of adoption deed dated 01.03.2014 attested by Notary Public. Subsequently, the said Sadasivam also died on 17.04.2014. It is seen from the above said extracted portion of the affidavit filed by the wife of said Sadasivam that she is in no way connected with the minor son, therefore, this Court, for the purpose of taking care of the minor son, is inclined to appoint the natural father - A.Bobby Bob Kennedy as guardian of the minor son-B.Tamilselvan. Accordingly, the appellant / A.Bobby Bob Kennedy is appointed as guardian of minor ward-B.Tamilselvan. The Court below is directed to proceed with the Probate OP pending for consideration on merits and in accordance with law while dealing with both the adoption deed and the Will executed by the said Sadasivam, uninfluenced by the above observations of this Court.

6. In fine, the Civil Miscellaneous Petition is allowed to the extent stated above. No Costs. M.P.No.1 of 2015 is closed.

sd/-
Assistant Registrar(J)

/TRUE COPY/

Sub-Assistant Registrar

rkm

To

1. II Additional District Judge, Salem.

C.M.A. No.334 of 2015

CO-RSI
JD 28/01/2016

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