

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.14956 of 2015

K.Ranganathan

.. Petitioner/Petitioner

Vs

The Commissioner
Erode City Municipal Corporation
Erode 638 001.

... Respondent/Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the learned Judicial Magistrate No.2, Erode to receive and number the petition dated 18.02.2015 filed under Section 13(3) of the Registration of Births and Deaths Act, 1969 and to pass orders on merits by considering the circular dated 14.07.1999 to issue a second birth certificate to the petitioner's adopted daughter Minor Oviyaa.

For Petitioner : Mr.N.Manokaran
For respondent : Mr.C.Emalias,
Addl.Public Prosecutor

ORDER

This petition has been filed to direct the learned Judicial Magistrate No.2, Erode to receive and number the petition dated 18.02.2015 filed under Section 13(3) of the Registration of Births and Deaths Act, 1969 and to pass orders on merits by considering the circular dated 14.07.1999 to issue a second birth certificate to the petitioner's adopted daughter Minor Oviyaa.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. It is seen that this petitioner and his wife Tmt.R.P.Vasantha Ranjani were not blessed with child and therefore, they approached Mr.Ravi and Mrs.Selvi, who gave their child R.Oviyaa in adoption. The adoption was registered as Document No.19/2011 on 06.01.2011 in the office of the Sub Registrar, Sale East. Thereafter, when the petitioner wanted to alter the name of the parents and initials in the Date of Birth records of the child, he filed an application before the Judicial Magistrate-II, Erode under the Registration of

Births and Deaths Act, 1969. It is seen that the learned Magistrate has returned the petition directing the petitioner to approach the concerned Court. Challenging the returns made by the learned Judicial Magistrate, this petition has been filed.

4. The learned counsel for the petitioner brought to the notice of this Court a Circular issued by the Government of India on 14.07.1999, pursuant to the judgment of the Supreme Court in L.K.Pandey vs. Union of India [AIR 1992 SC 118]. In paragraph 4 of the Circular, it is stated as follows:

"4. It may, however, be noted that the said guidelines pertain to only those children who are sponsored for adoption by the orphanages, Child Welfare agencies and other like agencies. There are large number of adoptions that take place outside these institutional arrangements for example children taken on adoption from relatives or friends. It has been decided to extend the benefit to such children also. As format adoptions of such nature are prevalent mostly in urban areas, it is more than likely that births of these children would have been registered and birth certificates issued. In such cases, it would be sufficient if the Magistrate having jurisdiction over the area passes an order approving the particulars of the adoptive parents to be entered/alterd in the birth register/certificate and also pass an order for issuing a second birth certificate. If in case, the birth has not been registered the Magistrate passing the order has to determine exact date of birth, which he can do on the basis of relevant proof or declaration from the natural parents and in their absence, on the basis of the certificate granted by the Chief Medical Officer."

Relying upon the above said Circular, the learned counsel submitted that the Judicial Magistrate has the power for altering the name of the parents of the adopted child in the municipal records. The aforesaid Circular came up for consideration before a learned single Judge of this Court in B.Selvaraj vs. The Commissioner, Madurai City Municipal Corporation, Madurai [2008 (7) MLJ 721] and the learned Judge has held in paragraph 12 as follows:

"12. Even then the circular cannot modify the procedure prescribed under the R.B.D. Act. Further, the RBD Act that provides for Registration only once. If the child's birth was noted elsewhere at the time, the child's birth by the information provided by its biological parents or by any other persons as required under law, then the RBD Act do

not provide for a second registration. That was not the intent and purpose of the Act. Under the RBD Act, a child cannot have two registrations. To give effect to the circular of the Government of India, it requires a parliamentary amendment. Therefore, in order to avoid, such a lacunae and uncertainty the best way out is to direct the adoption agency to ascertain the age either from the biological parents, when surrendering the child. In case of an abandoned child to get a qualified medical doctor's opinion after conducting relevant test and to fix an approximate date of birth. Such certificates produced before the Court empowered to hear cases arising out of HAMA or under the GAWA (Guardians and Wards Act).

13. Therefore, the learned Judges in the District Courts who are dealing with adoption cases must make a specific recording of the date of birth of a child to be given in adoption in the operative portion of their orders. They must also make a general declaration in their order that the date of birth as recorded in the order of the Court relating to the child should be acted upon by all authorities concerned including the Educational and Revenue and other authorities.

14. Such direction given by the District Courts will go a long way by cutting the red-tape and avoid bureaucratic hurdles and will bring some solace to the adoptive parents.

5. This Court is in complete agreement with the aforesaid observation of the learned single Judge. On a reading of the Registration of Births and Deaths Act, 1969, it only provides for registration of date of birth and also provides for a procedure to alter the date of birth, if any error is noticed. The Act does not contemplate registration of the names of the parents of the new born. Of course, that is an aspect which is incidentally done for making the certificate complete. Essentially, Registration of Births and Deaths Act only concerns with registration of the date of birth and death and nothing more. If any alteration other than the date of birth is required to be done in the statutory register, the parties cannot approach the Magistrate under Section 13(3) of the Act, but can only file a civil Suit. In this case, admittedly, the biological parents and the adoptive parents are Hindus and the adoption is covered by the Hindu Adoptions and Maintenance Act, 1956. The Adoption Deed dated 06.01.2011 has also been registered as Document

No.19 of 2011 before the Sub Registrar, Salem East. Sections 12 and 16 of Hindu Adoptions and Maintenance Act, read as under:

"12. Effects of adoption.- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

Provided that--

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

16. Presumption as to registered documents relating to adoption.-- Whenever any document registered under any law for the time-being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

6. From the above provisions of law it is clear that, the adopted child severs all the ties in the family of his birth and they are replaced by those created by the adoptive family. Section 16 creates a presumption in favour of adoption, where the adoption is by a registered document. The rules framed under the Central Adoption Resource Agency [CARA] etc. will not apply to adoptions between biological parents and adoptive parents covered by Hindu Adoptions and Maintenance Act, 1946. Those rules relate only to institutional adoptions. Therefore, the adoptive parents should not be made to run from pillar to post for effecting change of initials of the adopted child. That apart, the name of the biological parents in the Births and Deaths Register should not be changed, just because the child

has been given in adoption. The petitioner can issue a private notification in the Gazette about the change of initials for the adopted child and that would suffice. The school authorities and passport authorities have to follow the mandates of Section 12 of Hindu Adoptions and Maintenance Act and the name of the parents in their records should be that of the adoptive parents.

In fine, the learned Judicial Magistrate was right in returning the petition and it requires no intervention by this Court. The petitioner may produce a copy of this order to the School authorities, who I am sure, will include the name of the adoptive parents with the changed initials in their record. With the above observation, this petition is closed.

gms

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

- 1.The Commissioner
Erode City Municipal Corporation
Erode 638 001.
 - 2.The Judicial Magistrate No.2,
Erode
 - 3.The Public Prosecutor
High Court,Madras.
- + 1 cc to Mr.N.Manokaran, Advocate SR 31092

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Cr1.OP No.14956 of 2015

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