

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Revision No.1466 of 2016
Date of decision : 02.05.2016**

Mohinder Singh and another

.....Petitioners

Versus

General Public and others

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Ish Puneet Singh, Advocate for petitioners.

DARSHAN SINGH, J.

Present revision petition has been preferred against the order dated 16.01.2014, passed by learned Civil Judge (Senior Division)-cum-Additional Chief Judicial Magistrate-cum-Guardian Judge, Jalandhar and the order dated 24.12.2015, passed by learned Additional District Judge, Jalandhar.

2. The brief facts leading to the filing of the present revision petition are that petitioners preferred a petition under Section 9 (4) of the Hindu Adoption & Maintenance Act, 1956 read along with Section 41 of The Juvenile Justice (Care and Protection of Children) Act, 2000

(hereinafter called the 'Juvenile Justice Act') for adoption of Gurjot Singh. The petitioners are the maternal grandparents of minor Gurjot Singh, who was born on 06.06.1998. His father Kuldeep Singh has expired on 30.04.2007. His mother Rupinder Kaur has also expired on 27.11.2002. During the pendency of the appeal before learned Additional District Judge, Jalandhar, respondents No.2 & 3 who were the parental grandparents of Gurjot Singh have also expired on 14.11.2015 and 18.04.2014, respectively. Petitioners had earlier filed a petition under Sections 7 and 9 of the Guardians & Wards Act for declaring them as guardian of minor Gurjot Singh. The same was allowed.

3. The petition filed by the petitioners was dismissed by the learned Guardian Judge primarily on the ground that petitioners already had a son, so they were barred from taking minor Gurjot Singh in adoption. Learned Guardian Judge further held that the provisions of the Juvenile Justice Act were not applicable as minor Gurjot Singh was not a juvenile in conflict with law.

4. The petitioners preferred the appeal. The same was also dismissed by the learned Additional District Judge, Jalandhar without any prejudice to their rights to seek adoption of the minor Gurjot Singh or to have the recourse to other remedies, if any available to them in accordance with law. Hence, this revision petition.

5. Learned counsel for the petitioners contended that as per Section 41 (6) of the Juvenile Justice Act, the presence of the biological son is no ground to decline prayer for adoption. To support his

contentions, he relied upon cases ***Rajan Mittal and another Vs. Nari Niketan Trust (Regd.) Nakodar Road, Jalandhar 2012(4) RCR (Civil) 541 and in the matter of adoption of Payal @ Sharinee Vinay Pathak Mumbai (Bombay) 2009(4) RCR (Civil) 401.***

6. He further contended that minor Gurjot Singh is an orphaned child. His parents and parental grandparents have already died. So, it is in the welfare of the child that his adoption should be allowed to the petitioners, who are his maternal grandparents. They have already been appointed as his guardian by the Court. There is nobody else to look after minor Gurjot Singh. Thus, he contended that the petition filed by the petitioners has been wrongly dismissed by the courts below.

7. I have duly considered the aforesaid contentions.

8. Petitioners have filed the petition under Section 9 (4) of the Hindu Adoption and Maintenance Act, 1956 read with Section 41 of the Juvenile Justice Act for the adoption of minor Gurjot Singh. This fact is not disputed that the parents of minor Gurjot Singh namely Kuldeep Singh and Rupinder Kaur had already died on 30.04.2007 and 27.11.2002, respectively. It is also not disputed that respondents No.2 & 3 Satnam Singh and Charan Kaur, the parental grandparents of minor Gurjot Singh have also expired during the pendency of the appeal before the Court of learned Additional District Judge, Jalandhar on 14.11.2015 and 18.04.2015, respectively. So, minor Gurjot Singh is an orphaned child. Section 41 (6) (b) of the Juvenile Justice Act provides that the Court may allow a child to be given in adoption to the parents to adopt a

child of same sex irrespective of the number of living biological sons or daughters. So, as per the aforesaid provision, there is no bar to adopt the child under the provisions of Juvenile Justice Act even if a person seeking adoption already have child of the same sex. The provisions of the Juvenile Justice Act are secular in character and that the benefit of adoption is not restricted to any religion or social group. Even if there were to be a conflict between the provisions of Hindu Adoption and Maintenance Act and the Juvenile Justice Act, the provisions of Juvenile Justice Act shall prevail as it is the later Act. It is settled principle of law that when there are two special Acts dealing with the same subject matter, the legislation which has been enacted subsequently would prevail. Reference can be made to the matter of adoption of *Payal @ Sharinee Vinay Pathak Mumbai (Bombay)* (supra). Thus, mere this fact that petitioners had already a son, was no ground to decline the request of the petitioners of adoption minor Gurjot Singh, if the case of the petitioners was otherwise covered under the provisions of Section 41 of the Juvenile Justice Act and the procedure prescribed under Rule 33 of The Juvenile Justice (Care and Protection of Children) Rules 2007 (hereinafter called the 'Rules') has been followed.

9. Section 2 (d) of the Juvenile Justice Act defines the “child in need of care and protection” which reads as under:-

“(d) “child in need of care and protection” means a child—

- (i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

- (ia) who is found begging, or who is either a street child or a working child,
- (ii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or
 - (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
- (iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
- (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- (v) who does not have parent and no one is willing to take care of or whose parents have abandoned1[or surrendered] him or who is missing and run away child and whose parents cannot be found after reasonable injury,
- (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- (viii) who is being or is likely to be abused for unconscionable gains,
- (ix) who is victim of any armed conflict, civil commotion or natural calamity.”

10. Section 41 of the Juvenile Justice Act deals with the responsibility for providing care and Protection to the children. Section 41 (2) provides that adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such

mechanism as may be prescribed.

11. There is no dispute to the fact that minor Gurjot Singh has already lost his parents as well as parental grandparents. But even then he does not fall in the definition of the “child in need of care and protection” as defined in Section 2 (d) of the Juvenile Justice Act. Section 2 (d) (v) of the Juvenile Justice Act provides that the child who does not have parent and no one is willing to take care of, will fall in the category of “child in need of care and protection”. In the instant case, no doubt minor Gurjot Singh has no parent or parental grandparent, but at the same time, even as per the case of the petitioners, they are ready and willing to take care of minor Gurjot Singh being their grandson (son of their deceased daughter). In addition to that, they have already been appointed as lawful guardians. Minor Gurjot Singh is also not a “juvenile in conflict with law”. It is also not disputed that the procedure prescribed under Rule 33 of the Rules has also not been complied with or followed for seeking adoption of minor Gurjot Singh under the provisions of Juvenile Justice Act.

12. The cases relied upon by learned counsel for the petitioners are quite distinguishable on facts. In case, ***in the matter of adoption of Payal @ Sharinee Vinay Pathak Mumbai (Bombay)*** (supra) the minor child was a surrendered child. The substance and effect of the procedures prescribed under the Juvenile Justice Act was duly complied with. In case ***Rajan Mittal and another Vs. Nari Niketan Trust (Regd.) Nakodar Road, Jalandhar*** (supra), the child was under the custody of

Nari Niketan Trust. While dismissing the appeal filed by the petitioners, the learned Additional District Judge in order to safeguard the interests of the petitioners, has observed as under:-

“13) * * * If the petitioners considered themselves entitled to adopt minor Gurjot Singh by invoking the provisions of Juvenile Justice Act, they should have followed the procedure prescribed for the same under the scheme of this Act. In Para No.34 of the above ruling of the Hon'ble Bombay High Court, it was specifically mentioned that the substance and effect of the procedures prescribed under the Juvenile Justice Act, had been complied with. However there is nothing available on record to show that the petitioners have ever taken up the case for adoption of minor Gurjot Singh as per the mechanism provided under the Juvenile Justice Act.

14) In view of the above discussion, without prejudice to the rights of the petitioners to seek the adoption of the minor child or to have recourse to other remedies, if any which may be available to them in accordance with the provisions of law, the present appeal filed by them is liable to be dismissed. * * *”

13. So, the petitioners can well take the benefit of the aforesaid liberty granted by the learned Appellate Court.

14. Consequently, I do not find any force in the present appeal and the same is hereby dismissed.

02.05.2016
sunil yadav

(DARSHAN SINGH)
JUDGE