

CWP No.3560 of 2016 (O&M)

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

**CWP No.3560 of 2016 (O&M)
Date of decision:04.05.2016**

Baljit Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Amit Verma, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The interesting question arising in this petition is as to whether name of a step-father, on the asking of his step-son, can be entered in the Birth Certificate, replacing the name of the biological father, in terms of Section 15 of the Registration of Births and Deaths Act, 1969?

The facts of this case are that the petitioner was born on 05.10.1993 from the lions of Harjinder Kumar and Surjit Kaur who got married on 16.02.1991. The entry of his birth was recorded in the Birth Certificate No.575 issued by the Additional District Registrar, Births & Deaths, Hoshiarpur as under:-

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“T.145565/24.12.15

Government of Punjab
Health & Family Welfare Department
Chief Registrar, Births & Deaths, Punjab

D.P.H-368
Form-6

No.575

BIRTH CERTIFICATE

This is to certify that following information has been taken from the original record of birth as entered in the register maintained by the Local Registrar, Births and Deaths, Municipal Corporation/Council/Panchayat/Police Station/Block (P.H.C.) P.S. Sadar, Tehsil and District Hoshiarpur for the year 1993.

Name: Baljit Kumar

Father's Name: Harjinder Kumar

Grand Father's Name:Piara Lal

Mother's Name:Surjit

Date of Birth:5.10.1993

Place of Birth:Marnayan Khurd

Date of Registration No.:23.10.93

Registration No.10

Address of parents at the time of birth of the child

Permanent address of parents

Remarks (if any)

Date of Issue

Name & Designation of official who prepared certificate

Signature, name and address of the issuing authority

Sd/- and Seal
Additional District Registrar
Births & Deaths
Hoshiarpur”

The mother of the petitioner filed a petition under Section 13 of the Hindu Marriage Act, 1955 against her husband Harjinder Kumar bearing HMA Case RBT No.98 of 27.8.04/29.10.05 in the Court of Additional District Judge, Hoshiarpur, which was allowed on 06.06.2006 and their marriage was dissolved by a decree. Thereafter, the petitioner got the name

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of his step-father Surjit Singh recorded against his name in the records of the Punjab National Bank in which he maintains his account, Voter Identity Card issued by the Election Commission of India and also in the Adhar Card. However, the petitioner, in order to get the name of his step-father Surjit Singh incorporated in his Birth Certificate by replacing the name of his biological father, filed an application to the respondents.

Counsel for the petitioner has submitted that the entry in the Register of Birth can be corrected in terms of Section 15 of the Act and hence, the direction may be issued to the respondents to perform their statutory duty.

I have heard learned counsel for the petitioner and perused the available record.

There is no dispute that the petitioner is the son of Harjinder Kumar who is his biological father. The word “biological father” is defined in the Black's Law Dictionary as “the man whose sperm impregnated the child's biological mother”. Even otherwise, in the same dictionary, “biological parents” is provided as “the woman who provide the egg or the man who provides the sperm to form the zygote that grows into an embryo” which is also termed as “genetic parents”. On the other hand, the step-father is defined in the Concise Oxford English Dictionary as “a man who is married to one's mother after the divorce of one's parents or the death of one's father”. Thus, there is no doubt that Harjinder Kumar was the biological father and Surjit Singh is the step-father of the petitioner.

Now the question is as to whether Section 15 of the Act can be

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invoked by the petitioner for correction of the entry in his Birth Certificate for incorporation of the name of his step-father in place of his biological father. In order to appreciate the controversy, it would be relevant to refer to Section 15 of the Act:-

“15. Correction or cancellation of entry in the register of births and deaths.-- If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.”

A bare perusal of the aforesaid provision shows that the applicant has to prove to the satisfaction of the Registrar about the error in the entry of a birth or death in form or substance which may crept in fraudulently or improperly, which can be corrected or cancelled by the Registrar by making suitable entry in the margin but without any alteration of the original entry and he shall sign the marginal entry and add thereto the date of the correction or cancellation.

The entry in the Birth Certificate of the petitioner, which was conveyed to the authorities on 23.10.1993 about birth of the petitioner on 05.10.1993 out of the wedlock of Harjinder Kumar and Surjit Kaur, is neither recorded fraudulently or improperly and is also not erroneous in form or substance. The mother of the petitioner has only divorced his biological father and after remarriage with Surjit Singh, he has become the

stop-son of his step-father, who cannot replace the biological father but the things would have been different had it been a case of adoption because as per Section 12 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as the “Act of 1956”), the child given in adoption is deemed to be the child of his adoptive father for all intents and purposes from the date of adoption and loses all his ties with the family of his birth. Section 12 of the Act of 1956 is reproduced here-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.”

This could be examined from another angle. Section 6 of the Hindu Minority and Guardianship Act, 1956, defines the natural guardian of a Hindu minor in which the explanation says that the expressions ‘father’ and ‘mother’ do not include a step-father and a step-mother. Section 6 of the aforesaid Act is reproduced as under:-

“6. Natural guardians of a Hindu minor.-- The natural

guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

- (a) in the case of a boy or an unmarried girl- the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
- (b) in the case of an illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the father;
- (c) in the case of a married girl-the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section--

- (a) if he has ceased to be a Hindu; or
- (b) if he has completely and finally renounced the world becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.-- In this section, the expressions 'father' and 'mother' do not include a step-father and a step-mother."

However, Section 7 of the aforesaid Act, dealing with the natural guardianship of the adopted son, provides otherwise. Section 7 of the aforesaid Act is reproduced as under:-

"7. Natural guardianship of adopted son.-- The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and father him to the adoptive mother."

Even otherwise, Section 9 of the Act of 1956 further provides that no person except the father or mother of the child shall have the competence to give the child in adoption. The term 'father' does not include the step-father rather explanation (i) appended to Section 9 further provides that the expressions 'father' and 'mother' do not include an adoptive father and an adoptive mother, meaning thereby if the child is adopted by an adoptive parents, they cannot further give the child in adoption. Section 9

of the Act of 1956 is reproduced as under:-

“9. Persons capable of giving in adoption.--(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (3) and sub-section (4), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation: For the purposes of this section-

(i) the expression "father" and "mother" do not include an adoptive father and an adoptive mother;

(ia) "guardian" means a person having the care of the person or a child or of both his person and property and includes-

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- (a) a guardian appointed by the will of the child's father or mother; and
- (b) a guardian appointed or declared by a court; and
- (ii) "court" means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides."

Thus, from the above, it transpires that even if there is a divorce between biological parents of the petitioner, in the presence of the biological father, the step-father of the petitioner cannot give the petitioner in adoption with his biological mother. Even under Section 8 of the Hindu Succession Act, 1956, the step-son is neither Class-I nor Class-II heir.

Thus, from the aforesaid discussion, it transpires that correction in the Birth Certificate in the Register of Births and Deaths of the adoptive parents can be made if it is proved to the satisfaction of the Registrar, that too in accordance with the other terms and conditions mentioned in Section 15 of the Act but the entry of a step-father, replacing the name of the biological father in the Birth Certificate maintained under the Act, cannot be made.

Consequently, the present writ petition is hereby dismissed being denuded of any merit.

May 04, 2016
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(Rakesh Kumar Jain)
Judge