

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 3843 of 2015(O&M)

Date of Decision: February 2 , 2016.

Neeru and another APPELLANT (s)

Versus

Arun Purang and another RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE RAJIVE BHALLA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. N.C.Kinra, Advocate
for the appellants.

Mr. Yowan Sharma, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellants, Neeru and her husband – Parveen Kumar, have preferred this appeal impugning judgment dated 04.05.2015 passed by the Guardian Judge-cum-Civil Judge (Senior Division), Panchkula whereby petition under Section 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as the 'Act') filed by the respondents, Arun Purang and Ritikia, has been allowed, granting them custody of their minor son, Mayank, being his natural parents.

Present is an unfortunate case, where two sisters and their respective husbands are agitating their right for custody of the minor child, Mayank. It is important to note that appellant No.1, Neeru wife of Parveen Kumar, and respondent No.1, Ritikia wife of Arun Purang, are real sisters, Neeru being the elder sister.

The pleaded case of the respondent-petitioners, is that they were married on 01.05.2004, their marriage being registered with the Registrar of Marriage, Jayanagar, Bangalore. They have been residing at Bangalore since then and are blessed with three children, namely, Umika Purang born on 05.06.2005, Devesh Purang born on 29.05.2009 and Mayank Purang born on 11.08.2010 at St. Philomina Hospital, Bangalore. Appellants, Neeru and her husband, did not have any children. Appellant, Neeru, visited Bangalore in the month of September, 2010 and stayed with the respondents for one month. She requested respondents, Ritikia and her husband, to give their new-born child, Mayank, to her, but her request was turned down. She however became obsessed with the idea of taking the child and requested Ritikia, that she be allowed to take the child for a period of one month. Family members pressurized the respondent, Ritikia, to accept the said request to the extent that even their mother requested the respondents to give the child to appellant, Neeru, for one month as Neeru was allegedly harbouring the idea of committing suicide at that time.

It is in these circumstances that appellant, Neeru, was permitted to take the child for one month. When Ritikia asked for the custody of the minor child in January, 2011, appellant, Neeru, requested for extension of time and

promised to return the child in September, 2011. However, custody of the child was not handed back on the plea that some vaccination was to be completed and thereafter, appellants would come to Bangalore to handover the child. Still custody of the minor child, Mayank, was not handed over. The appellants are alleged to have gone underground to evade the respondents.

The respondents filed a suit, OS No.4378/2011 for declaration to the effect that they are biological parents of minor Mayank, thus, entitled to his custody. Said suit was however dismissed on the ground that without conducting a DNA test, it is not possible to decree the suit. It is specifically pleaded that the respondents never executed an adoption deed and thus, appellants are in illegal custody of the minor child. Petition No.195 under the Act was preferred by the respondents, claiming custody of the minor child before the Family Judge at Bangalore, which was dismissed for want of jurisdiction. Thereafter, the present petition under Section 25 of the Act was preferred at Panchkula by the respondents, the natural parents of the minor, Mayank.

The appellants contested the said petition questioning the maintainability and jurisdiction of the court as well as alleging concealment of true facts. It was averred that they filed a civil suit No.530 dated 06.02.2012 for issuance of permanent injunction against the natural parents regarding custody of the minor child. In the written statement, it is specifically averred that the natural parents did not want a third child as their family was complete whereas, the appellants despite having taken extensive treatment could not bear any child.

It was decided that the third child of the respondents would be handed over to

the appellants, who would raise him as their own and the natural parents would never demand his custody. It is submitted that all facilities including proper care and affection are being provided to the minor child. Expenses of the delivery of the minor child as well as the maid servant were borne by the appellants. Appellant, Neeru, also went to Bangalore to look after her sister when she was to deliver the minor child. When Neeru and her sister, Ritikia's father passed away, Ritikia alongwith the minor child came to Panchkula. All their expenses alongwith that of the maid were borne by the appellants. An adoption deed dated 18.09.2010 in respect to minor, Mayank, was allegedly executed in favour of the appellants, who prayed for dismissing the petition.

Learned Guardian Court, Panchkula on the basis of pleadings of the parties framed the following issues:

1. Whether the petitioners are entitled for the custody of minor as prayed for? OPP
2. Whether the petition is not maintainable in the present form? OPP
3. Whether the petitioner has not come to the court with clean hands, if so to what effect? OPD
4. Whether the court has no jurisdiction? OPD
5. Relief.

On consideration of the facts, circumstances and evidence on record, petition under Section 25 of the Act filed by the respondents, Arun Purang and Ritikia was allowed. The present appellants were directed to hand over the safe custody of master Mayank to his natural parents within a period of one month. Aggrieved therefrom, present appeal has been preferred by the

appellants.

Learned counsel for the appellants vehemently argues that the custody of the child being with the appellants in itself is sufficient to prove that the minor child had been given in adoption. The child was barely 28 days old when his custody was handed over to the appellants. It is vehemently argued that the natural mother herself admitted the handing over of the child to the appellants. Adoption can be oral and there is no requirement for a formal deed of adoption. It is of no consequence that the appellants were unable to prove the adoption deed once custody of the minor child is admittedly with the appellants.

It is further argued that the learned Guardian Court is under an obligation to return a finding on the veracity of the adoption deed, therefore it has erred in holding that it is not required to do so. Adoption of the minor child is stated to be duly proved. The expense of delivery of the minor child, air fare etc. borne by the appellants are apparent from the record. Furthermore, documents exhibited by the respondents are liable to be excluded from consideration as the same were produced on 07.03.2015 in the statement of the counsel for the respondents without oath. No replication was filed by the respondents denying the averments made in the written statement. Reference is made to various interim orders passed by this Court in Civil Revision No.4114 of 2014 dealing with the interim custody of the minor child during the pendency of the petition under Section 25 of the Act to submit that love and affection is showered upon the child in abundance by the appellants and the excellent care being provided to the child is apparent. The child has been nurtured and brought up for the last five and half years by the appellants, thus it would not be in his welfare to uproot him at this stage.

Said arguments are refuted by learned counsel for respondents to submit that this appeal deserves to be dismissed as the respondents are admittedly the natural parents of the child thus, entitled to his custody. Once the child has not been given in adoption, there is no question of the welfare of the child being with the appellants. His welfare clearly lies with the natural parents, who deserve the custody of the child. Mayank, the minor child, was never given in adoption to the appellants who are trying to exploit the close relationship between the parties.

We have heard learned counsel for the parties and gone through the record.

It is not denied that the respondents i.e., Ritikia and her husband, Arun Purang are the natural parents of minor child, Mayank. The case of the appellants is that an adoption deed dated 18.09.2010 was executed by the respondents in their favour. The minor child was duly adopted by them from the natural parents. However, giving of the child in adoption is specifically denied by the respondents. A perusal of the record shows that the appellants have miserably failed to prove adoption of the minor child to justify custody of the minor child or their right to retain his custody.

In the civil suit No.530 dated 06.02.2012 (Ex.PW1) filed by the appellants, they have relied on the adoption deed dated 18.09.2010. However, this adoption deed has not been proved on record. In fact, when respondents moved an application dated 09.10.2010 (Ex.PZ/1) seeking a direction to the appellants to prove the original adoption deed in the civil suit, it was pleaded by the appellants that the adoption deed in question has been misplaced by them.

No effort was made to prove this adoption deed by way of secondary evidence.

It has been rightly held by the learned Guardian Court that the plea taken by the appellant Neeru (RW1) that this adoption deed is in possession of respondent-Ritikia is an after thought for the reason that such a stand has not been taken in the reply (Ex.PZ/2) to the application (Ex.PZ/1) mentioned above. Learned Gurdian Court in this respect has specifically observed as under:-

“27. Furthermore, respondent No.1 stated on oath that the stamp papers for the adoption deed had been purchased by petitioner Ritikia and she herself had got it drafted on 18.09.2010. It is a conceded fact that the petitioners have been residing at Bangalore subsequent to their marriage dated 01.05.2004. Petitioner No.2 Ritikia had visited Panchkula on account of sudden demise of her father, Sardari Lal, on 06.09.2010 only, and Kirya of her father, Sardari Lal, was performed on 18.09.2010, as admitted by RW1 Neeru during her cross-examination. In such circumstances, it cannot be assumed that petitioner No.2 would have purchased any stamp paper for the adoption deed in question or that she would have got the deed drafted/scribed through some lawyer at Panchkula at her own.

28. The copy of adoption deed (Ex.PU) suggests that it is a notarised document. Had the adoption in question taken place by virtue of said deed, none had restrained the respondents from examining the said Notary, who would have attested the deed at the time of drafting it. The original adoption deed dated 18.09.2010 has not seen the light of the day till today and since the nature of the document suggests its possession to be with the present respondents, an adverse inference will have to be drawn against the respondents for withholding the best evidence in their possession authenticating their custody over master Mayank.

29. As per language of the adoption deed (Ex.PU), the ceremony of giving and taking the minor son in adoption had already taken

place on 07.09.2010 and it was in continuation of the said ceremony that the adoption deed dated 18.09.2010 had been executed later on. However, since Sardari Lal, father of petitioner No.2 and respondent no.2, had died on 05.09.2010 or 06.09.2010 all of a sudden, circumstances did not suggest that any giving or taking ceremony of master Mayank in adoption would have been performed on 07.09.2010, as such the possibility of taking master Mayank in adoption by the respondents by virtue of the adoption deed dated 18.09.2010 is ruled out.

30. No doubt, the adoption of a child can also be an oral one, however, the aforesaid adoption of the child was also required to be proved by the respondents, once the petitioners have disputed the factum of giving their son in adoption to the respondents. None of the family members of petitioner No.2 or respondent No.2 could be examined by the respondents to suggest that any such adoption had taken place at Panchkula in their presence.”

In this view of the matter, it has been rightly held that the said court was not required to record a finding on the legality of the adoption deed but appellants are required to prove their plea of adoption of master Mayank by way of the said document or by way of oral adoption. There can be no adoption by implication.

It is to be noted that PW1 Ritikia has specifically deposed that custody of the minor child was handed over keeping in view the extremely close relationship between the parties and the fact that her sister, Neeru, was harbouring thoughts of suicide etc. at the relevant time, therefore, it was agreed that the child would be with her for one month. Father of the appellant, Neeru and respondent, Ritikia passed away on 05.09.2010. Ritikia alongwith the

child, the maid and Neeru had travelled from Bangalore to Chandigarh on 06.09.2010. Air tickets are duly exhibited as Ex.PZ/4 to Ex.PZ/9 by the respondents. It is pertinent to note that not a single question regarding the adoption deed being executed, has been put to PW1, Ritikia.

The fact of custody of the minor child being with the appellants by itself, does not entitle them to his custody. It is not denied that respondents Ritikia and Arun Purang are the natural parents of the minor child. It cannot be presumed in the absence of any evidence that custody of the minor child was handed over to them pursuant to execution of an adoption deed.

Similarly, argument on behalf of the appellants that adoption can even be oral and it is not necessary to prove the adoption deed, is indeed fallacious in the light of specific stand taken by the appellants that the child was adopted by them on execution of a formal adoption deed. The appellants are further unable to prove any customary adoption or ceremonies in respect to such a customary adoption, if permissible at all.

Similarly, contention that welfare of the minor child is with the appellants while referring to the observations of this Court while dealing with the prayer for interim custody of the child, are of no avail to the appellants in the absence of any legal right to the custody of minor child vesting in them. It is not the case of the appellants that the respondents are not well placed, hence unable to look after the needs of the minor child. They are, in fact, well placed and comfortable, looking after both their elder children in a proper manner. The welfare of the minor child is not in jeopardy with them in any manner. It is unquestionable that the natural parents are entitled to the custody of the minor

child.

Reliance by learned counsel for the appellants on the decision of this Court in Arvinder Singh v. Sarabjit Kaur, 2015(3) RCR(Civil) 206 and the Hon'ble Supreme Court in Syed Saleemuddin v. Dr. Rukhsana, 2001(5) SCC 247 is of no avail, as the facts of the present case are clearly distinguishable. Dispute regarding custody of the minor child in both the abovesaid case was between the parents of the minor child. Thus, observations regarding the welfare of the child in these cases have to be read in that context and are not relevant in the present factual matrix.

Learned counsel for the appellants is unable to point out any illegality or infirmity in the impugned judgment dated 04.05.2015 passed by the Guardian Judge-cum-Civil Judge (Senior Division), Panchkula which warrants interference by this Court.

Accordingly, this appeal is dismissed.

(**RAJIVE BHALLA**)
JUDGE

(**LISA GILL**)
JUDGE

February 2 , 2016.
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