

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13403 OF 2016**

Parag Rughani & Anr.

..Petitioners

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr. Archit Jayakar a/w. Ms. Surabhi Agrawal i/b. Jayakar & Partners
for the Petitioner

Mr. Manish Pabale, AGP for the Respondent No.1.

Mr. Mayuresh Lagu for the Respondent No.2.

**CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
DATED : 16TH FEBRUARY, 2017**

P.C.

1. By this petition under Article 226 of the Constitution of India, 1950, the petitioners are seeking correction of the record maintained under the Registration of Births and Deaths Act, 1969. The first Petitioner before the Court is claiming to be the adoptive father of a minor child and the second Petitioner is the natural mother of the child. On the basis of a Deed of Adoption dated 10th February, 2016

which is registered under the Indian Registration Act, 1908, an application was made to the Deputy Registrar who is responsible for maintaining the register of Births and Deaths of the Mira Bhayander Municipal Corporation for correcting the record of birth of the minor child. The prayer was for deleting the name of the natural father and substituting it by the first Petitioner who is claiming to be the adoptive father.

2. There is a decree of divorce passed on 21st April, 2002 by which the marriage between the second Petitioner and the natural father of the minor child has been dissolved. In the consent terms taken on record, it is provided that the custody of the minor child will remain with the second Petitioner. According to the case of the Petitioners, on 14th May, 2003 the second Petitioner married to the first Petitioner. According to the case of the Petitioners, a first Deed of Adoption was executed on 14th May, 2008 to which the natural father of the child is a signatory. There is a second Deed of Adoption dated 10th February, 2016 to which the present Petitioners are parties. The second Petitioner has executed the said Deed in her capacity as the natural mother as well as the permanent custodian of the minor

child. An application to the Health Department of the Mumbai Municipal Corporation for change of entry in the Birth Record was made on 9th March, 2016 on the basis of the Deed of Adoption dated 8th May, 2008. By the letter dated 21st April, 2016 the Health Officer of the Mumbai Municipal Corporation declined to carry out the correction. The Health Officer of the said Municipal Corporation informed the first Petitioner that necessary application will have to be made to the Registrar of Births and Deaths, Mira Bhayander Municipal Corporation. Accordingly, on 14th August, 2016, an application was made to the Registrar of Births and Deaths of the Mira Bhayander Municipal Corporation. By the impugned communication dated 21st August, 2016, the Deputy Registrar informed the first Petitioner that without there being an Order of the Competent Court, the change in entry of the name of father of the child cannot be effected. The challenge in this petition is essentially to the said communication.

3. The learned Counsel appearing for the Petitioner does not dispute that the entry of birth of the minor child has been made in exercise of powers conferred under Section 8 of the Registration of

Births and Deaths Act, 1969 (for short “the said Act of 1969”). He also accepts that except a limited power under Section 15, there is no provision under the said Act of 1969 or Rules framed by the Government of Maharashtra under the said Act of 1969 for changing or replacing the name of the natural father of the child. He, however, relies upon the provisions of the Hindu Adoption and Maintenance Act, 1956 (for short “the said Act of 1956”). He relies upon the various sections of the said Act of 1956 and in particular Section 12 and Section 16. He pointed out Section 12 which provides for the legal effect of a valid adoption. He also pointed out Section 16 which incorporates a presumption as to registered documents relating to adoption. He has also relied upon the Circular issued by the Ministry of Home Affairs on 12th March, 2013 dealing with the procedure for making and changing entries in the Birth record of the children taken on adoption. He also relied upon the clarification issued on 15th May, 2015 by the Ministry of Home Affairs as regards the circular dated 12th March, 2012. He also relied upon several decisions of the Apex Court as well as a decision of the Gujarat High Court. He relied upon a decision of this Court as well. His

submission is that once there is a valid adoption under a registered document, an effect has to be given to the registered Deed of Adoption in the record of births and the parties cannot be driven to Civil Court to obtain the declaration.

4. We have carefully considered the submission. Firstly, we deal with Section 16 of the said Act of 1956. On plain reading of Section 16 it is apparent that the question of presumption will arise when the document purporting to be a registered Deed of Adoption is produced before a Court of Law. The learned Counsel appearing for the Petitioners has relied upon the decision of the Apex Court in the case of MST. DEU and Others vs. Laxmi Narayan and Others¹. In paragraph 2, the Apex Court has considered the provisions of Section 16 . In paragraph 3 the Apex Court has held thus :

“In view of Section 16 aforesaid 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 persons mentioned therein, the Court shall presume that the adoption has been made in compliance with the provisions of the said

¹ (1998) SCC 701

Act unless and until it is for partition to collaterally challenge the said registered deed of partition. In view of Section 18 of the aforesaid Act it was open to them to disprove such deed of adoption but for that they had to take independent proceeding. The High Court was fully justified in directing that the respondent be substituted in place of Smt. Phulla on the basis of the registered deed of adoption produced before the court.”

5. The presumption under Section 16 is attracted when a registered document of adoption is tendered in evidence before any Court. Section 16 itself provides that the said presumption can be rebutted by a person interested in denying legality and validity of adoption. The presumption which is incorporated in Section 16 is rule of evidence which will apply only when the document is tendered in evidence before the Court of law. The presumption will have no application when document is tendered before the Registrar appointed under Section 7 of the said Act of 1969. He is not a Court.

6. As far as the argument based on Section 12 of the said Act of 1956 is concerned, the said Section will have application when the adoption is proved to be valid in accordance with provisions of the

said Act of 1956.

7. We have carefully perused all the decisions relied upon by the learned Counsel appearing for the Petitioner. None of the decisions lay down as a principal of law that only on production of a registered Deed of Adoption, the Registrar appointed under Section 7 of the said Act of 1969 is empowered to delete the name of the biological father or mother, and enter the name of the adopted father or mother, as the case may be. The Registrar appointed under the said Act of 1969 has no power to adjudicate upon the issue whether the adoption as reflected from the Deed produced before him is legal and valid. There is no power conferred by the statute upon him for making an adjudication of the issue of the legality and validity of the adoption.

8. The Registrar, on the basis of a registered document, cannot delete the name of the biological father from the birth Register and replace it by the name of the alleged adoptive father. He has no power to issue notice to the natural father and make an adjudication. The learned Counsel appearing for the petitioner submitted that this Court should issue notice to the biological father. If he has no

objection, necessary direction can be issued. In this petition under Article 226 of the Constitution of India we are not adjudicating upon the legality and validity of the adoption claimed by the first Petitioner. The issue is of the power of the Registrar under the said Act of 1969, to act on the basis of a registered Deed of Adoption and take drastic action of the deletion of the name of the biological father of the child.

9. The learned Counsel appearing for the Petitioner relied upon the circular dated 10th March, 2012 issued by the Ministry of Home Affairs containing the guidelines. The guidelines cannot have overriding effect on express provisions of law. Wherever there is an Order of a Competent Court permitting an adoption or approving an adoption or holding the adoption to be lawful, the Registrar, under the provisions of the said Act of 1969 is bound by the Orders of the Court.

10. The learned Counsel appearing for the Petitioner relied upon a decision of this Court in the case of *Jigna Dedia v. Union of India*² and another. The issue before this Court in the said decision was as

2 2015(2) Bom .C.R 671

regards incorporating the name of the adoptive father on the passport of the minor son. In the facts of the case, on the basis of the Deed of Adoption, the change of name was notified in the Government Gazette. The school record of the child also showed the name of the adoptive father as the father of the child. Even Adhar Card and Pan card of the child were bearing the name of the adoptive father. This was not a case where the issue was of recording the name of the adoptive father in place of the natural father in the register of Birth and Deaths under the said Act of 1969. The Register of births is a primary record of the birth. The question is of changing the entries in the said primary record regarding the birth of a child.

11. It will be necessary to make reference to Section 13 of the said Act of 1969. It provides that when any birth or death is not registered within a period of one year of its occurrence, it can be registered only on the basis of an Order made by a Magistrate of the First Class or a Presidency Magistrate after verifying the correctness of birth or death and on payment of the prescribed fees.

12. None of the decisions relied upon by the Petitioner are dealing with the issue of the power of the Registrar appointed under the said

Act of 1969. We are not entering into a wider issue whether from the Register of Births maintained under the said Act of 1969, an entry of the name of the biological father can be deleted and substituted by the name of the adoptive father. Suffice it so say that only on production of a registered document of adoption, the Registrar under the said Act of 1969 is powerless to delete the name of the biological father and to enter the name of the adoptive father in his place. The reason is that there is no such statutory power vested in the Register under the said Act of 1969 or under the Maharashtra State Rules framed under the said Act of 1969. Moreover, the Registrar has no power of deciding the issue whether the adoption is valid.

13. The consequences of making an entry of the name of the adoptive father in the Register of Birth by replacing the name of the biological father without there being a finding of the Competent Court regarding the validity of adoption can be drastic.

14. Therefore, we find no error in the view taken by the Deputy Registrar in the present case when he came to the conclusion that unless there is an order of the Competent Court, the deletion of the name of biological father and the inclusion of the name of the

adoptive father cannot be made.

15. We find no error in the view taken by the Deputy Registrar. Accordingly, we find no merit in the petition and the same is rejected. We, however, make it clear that on production of an order or decree of the Competent Court holding that the adoption is lawful, the Registrar appointed under Section 7 of the said Act of 1969 is bound to effect the change in the entries in accordance with law.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)