

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

ORIGINAL SIDE APPEAL NO.97 OF 2017

1.M.Francis Abraham
2.Mrs.F.Ananthi Maragatham

... Appellants

Original Side Appeal is filed under Order XXXVI Rule 9 R/w Clause 15 of the Letters Patent against the Fair and Decreetal order dated 02.02.2017 made in O.P.No.968 of 2016.

Prayer in O.P.No.968 of 2016:-

(a) That the petitioners be appointed as the adoptive parents of the person of the minor Ashwin as per Section 41(6) of the Juvenile Justice Act of 2000 as amended by Act 33 of 2006.

(b) That the minor Ashwin be entitled to the legal status of a biological child with all the rights of succession and inheritance.

(c) That the date of birth of the minor Ashwin may be declared as 01.05.2015

For Appellants : M/s.M.B.Dominique

JUDGMENT

(Judgment of the Court delivered by N. ANAND VENKATESH., J.)

The petitioners who filed a petition under Section 41 (6) of the Juvenile Justice (Care & Protection of Children) Act 2000 (as amended by Act 33 of 2006) seeking for the relief of appointing them as the adoptive parents of minor Ashwin along with other consequential reliefs, have filed the present intra Court Appeal aggrieved by the imposition of a onerous condition which was made a condition precedent for the main order to come into effect.

2.The petitioners have no children and therefore they decided to go in for adoption. The petitioners registered with

CARA and who in turn directed the petitioners to approach an Adoption Agency named Grace Kennett Foundation Mazhalai Illam situated at Madurai. After undergoing the entire process, the petitioners gave their consent and willingness to adopt the minor child and the physical custody of the minor child is also given to the petitioners.

3.It is under these circumstances, the petitioners filed the above Original Petition claiming for the reliefs mentioned supra.

4.The first petitioner examined himself as PW-1, and Exs.P-1 to P-9 were marked through him. The Secretary of the HOLY Apostles Convent and Superintendent of St.Thomas Mount Babies Home, was examined as PW-2 and Exs.P-10, P-14 were marked through the said witness.

5.The learned Single Judge was satisfied with the fact that the minor child is an abandoned child and the petitioners deserved to be adoptive parents of the minor child since it will be in the welfare of the minor child.

6.While passing this order, the learned Single Judge has directed the petitioners to donate a sum of Rs.1,00,000/- [Rupees One Lakh Only] to the Government Girls Higher Secondary School, Acharapakkam within a period of two weeks. Aggrieved by this condition, the petitioners have filed this Appeal.

7.The learned counsel for the appellants would submit that the Adoption Regulations of 2015 has fixed the adoption expenses in Schedule 13 to be paid by the adoptive parents while adopting a child. Admittedly, this has been complied with by the petitioners. The learned counsel further submitted that neither the Juvenile Justice Act nor the CARA Adoption Regulations contemplate imposing any condition as has been done by the learned Single Judge. The learned counsel further submitted that the Annual Income of the petitioners was only Rs.6,00,000/- [Rupees Six Lakhs only] and it will be too onerous for the petitioners to pay such a huge amount as donation. Therefore, the learned counsel submits that such a condition cannot be imposed and to that extent the order of the learned Single Judge needs interference.

8.We find force in the arguments advanced by the learned counsel for the appellants. After all the Act of Adoption, itself is a Nobel Act which many are not interested to undertake. Not all couples who do not have children, go in for adoption. Very few adopt the children by going through process of law imposed by the Act and Regulations. Therefore, it will be enough if the prospective adoptive parents make only such payments as provided in the Regulations. In fact, money should

not take precedent in issues of this nature since it involves a new relationship that blooms between the adoptive parents and the child. After all donation by its very definition is voluntary and it cannot be forcibly imposed on anyone.

9.We are therefore of the considered view that the condition imposed by the learned Single Judge directing the appellants to donate Rs.1,00,000/- [Rupees One Lakh only] as a condition precedent for the relief granted, requires interference. We hereby set aside the said condition imposed by the learned Single Judge.

10.The Original Side Appeal shall stand allowed and the appellants are entitled for the reliefs prayed for in O.P.No.968 of 2016.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KP

Copy to:

The Sub. Asst. Registrar,
Original Side, High Court
Madras.

+2cc to M/s.M.B.Dominique, Advocate, S.R.No.49751

O.S.A.No.97 of 2017

SSD(CO)
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