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

**CWP No.16923 of 2016
Date of decision:18.05.2018**

Sahil Sethi

...Petitioner

Versus

Union of India and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Narender Pal Bhardwaj, Advocate,
for the petitioner.

None for the respondents.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 10.12.2008 passed in the Pre Lok Adalat, Amloh, by which the petition filed by respondents no.3 and 4 for seeking custody of the petitioner was allowed.

The brief facts of the case are that the petitioner was born on 22.09.1996 in India out of the wedlock of Baldev Raj and Daljit Kaur. His father Baldev Raj died on 28.06.1998. His mother Daljit Kaur contracted second marriage with Tajinder Singh S/o Harnam Singh, resident of Amloh. Respondents no.3 and 4 are the maternal uncle and aunt (Mausa and Mausi) of the petitioner. The petitioner was given in adoption to respondents no.3 and 4 by his mother Dalit Kaur by executing an adoption deed on 11.03.2008. Respondents no.3 and 4 are the permanent residents of Switzerland. After the adoption, respondents no.3 and 4 filed a petition dated 27.03.2008 in the Court of Civil Judge(Senior Division), Amloh, for seeking custody of the petitioner

on the basis of adoption deed dated 11.03.2008. In the said petition, a compromise was effected between the parties, as per which mother of the petitioner, namely, Daljit Kaur agreed to hand over his custody to respondents no.3 and 4 and averred therein that she has no objection if the petition filed by respondents no.3 and 4 for seeking custody of the petitioner is allowed. Since the compromise was effected between the parties, therefore, the petition for seeking custody of the petitioner filed by respondents no.3 and 4 was taken up in the Pre Lok Adalat. The Presiding Officer of the Pre Lok Adalat, who happened to be the Civil Judge (Senior Division), Amloh, in whose Court the petition for custody was filed, after taking into consideration the adoption deed (Ex.P1) and compromise (Ex.PX), allowed the petition vide order dated 10.12.2008.

The petitioner has challenged the validity of the order dated 10.12.2008 on the ground that his adoption was illegal because respondents no.3 and 4 already had a natural born son, namely, Anmol Jaggi, who was born on 31.01.2002, much before execution of the adoption deed on 11.03.2008. The petitioner has also challenged validity of his adoption deed dated 11.03.2008 in terms of Section 11(i) of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as the "Act"), which reads as under:-

"11. Other conditions for a valid adoption- In every adoption, the following conditions must be complied with:-

- (i) If the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption."

The petitioner has filed this petition after attaining the age of majority and has challenged the impugned order dated 10.12.2008 passed in

the Pre Lok Adalat on the ground that the order passed by the Pre Lok Adalat is final in view of Section 21(2) of the Legal Services Authorities Act, 1987.

After the notice was issued in the present writ petition, respondents no.3 and 4 appeared through their advocate who had submitted a statement on 16.03.2017 that he does not want to file reply and the case was fixed for arguments. Thereafter, the case was adjourned twice and today, counsel for respondents no.3 and 4 did not appear.

Learned counsel for the petitioner has vehemently argued that the petitioner has a right to challenge the adoption after attaining the age of majority. It is submitted that he has been neglected by his adoptive parents because they already have a son, namely, Anmol Jaggi, who was born to them much before execution of the adoption deed on 11.03.2008.

I have heard learned counsel for the petitioner and examined the available record with his able assistance.

The petitioner has challenged in this case the order/award dated 10.12.2008 passed by the Pre Lok Adalat, Amloh. The said order was passed on a petition filed by respondents no.3 and 4 for seeking custody of the petitioner. They had alleged in the petition that they have become adoptive parents of the petitioner by way of adoption deed dated 11.03.2008 but the natural mother of the petitioner was not handing over his custody to them. During pendency of that petition, a compromise was effected between the parties in that case, as per which the natural mother of the petitioner agreed to hand over his custody to respondents no.3 and 4. This was the end of the litigation initiated by respondents no.3 and 4 for seeking custody of the petitioner. The matter was thus taken up in the Pre Lok Adalat by the Civil

Court and in view of the adoption deed Ex.P1 and compromise Ex.PX, that petition was allowed and custody of the petitioner was handed over to respondents no.3 and 4.

I do not find any error on the part of the Court below in passing the impugned order dated 10.12.2008 because it was based upon a compromise between the parties which was made part of the record as Ex.PX. The petitioner is basically aggrieved against his adoption which took place on 11.03.2008 by way of registered adoption deed. His whole emphasis is that he could not have been adopted as his adoptive parents already had a son before execution of the adoption deed and as such, his adoption is hit by Section 11(i) of the Act.

In case the petitioner is aggrieved against the validity of the adoption deed dated 11.03.2008, the only remedy available to him is to file a suit for declaration to challenge the adoption effected by way of registered adoption deed and not by way of this petition by challenging the impugned order passed in the Pre Lok Adalat, on the basis of which the petition filed by respondents no.3 and 4 for seeking his custody was allowed.

In view of the aforesaid, I do not find any merit in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

May 18, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No