



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.04.2019

Pronounced on : 01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) No.3854 of 2017

Gnanamirtham

... Petitioner

Vs.

1.The Tahsildar, Vilavancode Taluk,
Kuzhithurai, Kanyakumari District.

2.The Treasury Officer,
Kuzhithurai, Vilavancode Taluk,
Kanyakumari District.

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the first respondent in Na.Ka.No.A5/8606/2016 dated 08.10.2016 and to quash the same and direct the first respondent to issue nominee/legal heir certification for the petitioner's foster daughter R.J.Jani in order to enter into the petitioner's Pension Book within the time stipulated by this Court.

For Petitioner : Mr.M.R.Sreenivasan

For Respondents : Mr.A.Rabinson,
Government Advocate for Respondents

ORDER

The writ petitioner is a retired teacher. She got married to one Nelsakumar. But, no children were born through the wedlock. In these circumstances, the writ petitioner decided to adopt her brother's grand child namely, R.J.Jani. She adopted the said child on 05.08.2010. In fact, an adoption deed was executed and the same was also duly registered (vide document no.55/2010/Book No.4 on the file of the Sub Registrar, Marthandam. Based on the same, the petitioner moved the Tahsildar, Vilavancode for incorporating the name of R.J.Jani as her adoptive child and also for including her name as nominee in her service register. The petitioner's request was rejected by the impugned communication dated 08.10.2016. Questioning the same, this writ petition came to be filed.



2. Heard the learned counsel on either side.

3. The stand of the respondents is that the petitioner professes christianity and that therefore she must have adopted the child only through court of law. In as much the adoption did not take place through judicial process, the request of the petitioner was liable to be rejected.

4. I am of the view that the stand of the respondents cannot be accepted. The learned counsel appearing for the petitioner drew my attention to the decision of the Hon'ble Kerala High Court reported in **AIR 1999 Kerala 187 (Philips Alfred Malvin vs. Y.J. Gonsalvis)**. The Hon'ble Kerala High Court in the aforesaid decision held as follows :

"8. The Canon law does not prohibit adoption. The Code of Canon Law, Commissioned by the Canon Law Society of America, goes to show that Canon 110 relates to adoption, which reads as follows:

"Children who have been adopted according the norm of civil law are considered as being the children of the person or persons who have adopted them.

Adopted children are usually not at all, or occasionally not wholly, related to the parents adopting them.... Church law adopts the civil law pertinent to the area and states that adopted children are held to be the equivalent of natural children of an adopting couple in those instances in which adoption has been duly formatted according to the civil law."

Canon 111 provides, that-

"A child of parents who belong to the Latin Church is ascribed to it by reception of baptism, or, if one or the other parents does not belong to the Latin Church and both parents agree in choosing that the child be baptized in the Latin Church, the child is ascribed to it by reception of baptism but, if the agreement is lacking, the child is ascertained to the Ritual Church to which the father belongs."

From the above canon Laws, it can be seen that the church has adopted civil law pertaining to the area. Therefore, adoption made by Correa couple cannot be said to be invalid.

9. Mohammeden Law also recognise adoption if their is custom prevailing among Mohammeden communities. The custom is accepted to have the force of law, as is held in AIR 1936 Lahore 465. Second 29 of the Oudh Estates Act, 1869 permits a Mohammedan talukdar to adopt a son. In the State of Jammu & Kashmir, the existence of local custom regarding adoption has been



recognised by virtue of Sri Pratap Jammu & Kashmir Laws Consolidation Act, 1977. The right of the couple to adopt a son is a constitutional right guaranteed under Article 21. The right to life includes those thing which make life meaningful. Correa couple might have thought of making their life more meaningful by adopting a son.

10. Thus, the Hindu Law, Mohammeden Law and Canon Law recognise adoption. Therefore, simply because there is no separate statute providing adoption, it cannot be said that the adoption made by Correa couple is invalid. Since the adopted son gets all the rights of natural born child, he is entitled to inherit the assets of George Correa couple. The learned Subordinate Judge went wrong in holding that unless adoption is recognised either by personal law, custom or by canon law, the first respondent cannot claim right over the plaint schedule property, as the adoption itself is invalid in the eye of law. Therefore, the decree and judgment appealed against are liable to be set aside."

5. Of course, the Juvenile Justice (Care and Protection of Children) Act, 2015 provides for adoption even by those professing christianity. But then, this Act came into effect in the year 2015. The adoption in the case on hand pertains to the year 2010. In this view of the matter, the communication impugned in this writ petition is quashed. The writ petition stands allowed. The first respondent is directed to issue an appropriate certificate so as to include the name of R.J.Jani as the adoptive daughter of the writ petitioner in the pension book of the petitioner as her legal heir and nominee. This shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

Skm

TO

1. The Tahsildar, Vilavancode Taluk,
Kuzhithurai, Kanyakumari District.



2.The Treasury Officer,
Kuzhithurai, Vilavancode Taluk,
Kanyakumari District.

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+1CC TO MR.M.R.SREENIVASAN, Advocate Sr. No. 79493

Pre - Delivery Order made in
WP (MD) No.3854 of 2017
01.08.2019

TR (19.08.2019) 4P 4C