

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-565-2019 (O&M)
Date of Decision: 16.12.2019

Paramjeet Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Malkiat Singh Jandiala, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

Mr. K.S. Bhangu, Advocate,
for respondent Nos. 5 to 8.

Harnaresh Singh Gill, J.

By way of the present petition, the petitioner has sought a writ in the nature of Habeas Corpus, directing respondent Nos. 5 to 8 to release the detenue, baby, namely, Simran Kaur aged 5 years, who is the daughter of the petitioner.

This Court vide order dated 26.06.2019, while issuing notice of motion referred the matter to the Mediation and Conciliation Centre of this Court. However, the mediation between the parties remained unsuccessful.

Primarily, the custody of the minor child is being sought by the petitioner, being her natural mother, on the ground that the alleged adoption deed dated 30.05.2019 giving the minor child in adoption to respondent No.5, is the result of a

fraudulent action on the part of respondent Nos. 5 to 8. She, thus, prays for restoration of the custody of the minor child to her.

During the pendency of the present petition, the petitioner has filed CRM-W-79-2019 for preponement of the hearing of the case and also placing on record documents Annexures A.1 to A.5.

Annexure A.1 is the copy of the civil suit filed by the petitioner against respondent Nos. 5 to 8. The cause title of the said suit would read as under:-

“Suit for declaration to the effect that adoption deed dated 30.05.2019 of minor Simran Kaur daughter of plaintiff is null and void and is an act of fraud, misrepresentation and cheating and has no effect on the legal relation of plaintiff with Simran Kaur and she is still daughter of plaintiff.

And

Suit for mandatory injunction directing the defendants to hand over the custody of minor Simran Kaur which they have taken from the plaintiff by fraudulently and by misrepresentation and cheating and is in illegal custody of defendant.

And

Suit for permanent injunction restraining the defendant No.1 not to do any kind of act regarding the interest of minor on the basis of forged adoption deed in any manner to cause any harm to her.”

Learned counsel for the petitioner, when confronted with the position as to the maintainability of the present petition, especially when the petitioner has admittedly filed a civil suit challenging the adoption deed and the said suit is

pending adjudication before the civil Court, was unable to advance any legally sustainable argument in this regard.

Learned counsel for respondent Nos. 5 to 8, while referring to the order dated 2.9.2019 passed by the Civil Judge (Senior Division), SAS Nagar (Mohali) states that vide the said order, which has been passed in the civil suit challenging the adoption deed, the petitioner has been granted visiting rights qua the minor child. He has drawn the attention of this Court to para 40 of the said order, which would read as under:-

“40. In order to balance the interest of the parties, it is hereby ordered that defendants No. 1 and 2 shall produce the minor child before the Mediation and Conciliation Centre, SAS Nagar (Mohali) on every 1st and 3rd Saturday from 3.00 p.m. to 4.00 p.m. so that plaintiff can meet the minor child.”

It is further contended by the learned counsel for respondent Nos. 5 to 8 that the adoption deed being a registered document, the legality thereof can only be gone into by the Civil Court on the basis of the evidence led.

I have heard learned counsel for the parties and do not find any merit in the present petition.

Admittedly, the child was given in adoption by the petitioner to respondent Nos. 5 to 8. Still further, it is also not disputed that the petitioner after the death of her earlier husband, has since performed a second marriage. The adopting father is none else, but the real brother of the petitioner. Prima-facie, the adoption appears to have been done taking into

consideration the paramount interest and welfare of the minor child.

Still further, the validity of the adoption deed cannot be gone into by this Court as the same contains disputed questions of fact. As noticed above, the petitioner has already filed a civil suit challenging the adoption deed and the same is pending adjudication before the Civil Court. Thus, it is for the Court concerned to adjudicate upon the validity thereof on the basis of evidence led.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

16.12.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No