

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	27.02.2020
Judgment pronounced on	26.05.2020

CORAM

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P.No.797 of 2017

T.P.Vasanth

... Petitioner

vs.

1.R.Lakshmi Narasimhan

2.Ms.Sumeeta

... Respondents

This Petition is filed under Section 56(2) of the Juvenile Justice(Care & Protection of Children) 2016, praying for appointing as parent/father of the person of the minor female child Ms.Saatvika whose date of birth is 06.09.2009, consequently the said minor may be entitled to the legal status of a biological daughter with all the rights of succession and inheritance; to direct the authorities to reissue the birth certificate of the child Ms.Saatvika consequently; and that the Petitioner be permitted to take physical custody of female minor child Ms.Saatvika whose date of birth is 06.09.2009 for being adopted, brought up and maintained by the Petitioner.

For Petitioner : Mr.V.Raghavachari for
Mrs.Jayasudha Suryanarayanan

For Respondents : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.M.Arunachalam for R-1
Mr.G.Surya Narayanan for R-2

ORDER

This petition raises questions of considerable societal significance as to whether the consent of a natural parent to the giving of his minor child in adoption can be implied from the terms of the divorce decree between him and the natural mother of the child and whether his consent can be dispensed with in the interest of such child. The petition is filed under Section 56(2) of the Juvenile Justice (Care & Protection of Children) Act, 2016 (the Juvenile Justice Act) read with the Adoption Regulations, 2017 and Clause 17 of the Letters Patent to appoint the Petitioner, Mr.T.P.Vasanth, as the parent/father of the child; for custody of the child; and for consequential directions to the Registrar of Births.

2. The Petitioner is the step father of the child, the first Respondent is the biological father of the child and the second Respondent is the biological mother of the child and the present wife of the Petitioner. The petition is contested by the first Respondent. The first Respondent was married to the second Respondent earlier and the minor female child,

Ms.Saatvika, was born on 06.09.2009 to the first and second Respondents herein. Subsequently, they obtained a divorce in Petition No.A-1859 of 2011 by order dated 27.11.2012 from the 7th Family Court, Bandra, Mumbai, by entering into a compromise, which was named and styled as an agreement of settlement, which forms a part of the consent decree. As per the terms of the consent divorce decree, the second Respondent was granted permanent custody and guardianship and the first Respondent waived and relinquished his right to access, custody and guardianship on a permanent basis on condition that the second Respondent should not claim maintenance either for herself or the child forever. Thereafter, the second Respondent married the Petitioner on 10.10.2014 and the Petitioner, the second Respondent, the minor child, Saatvika, and the biological minor child of the Petitioner and the second Respondent live as a family unit with the Petitioner assuming and undertaking *de facto* parental obligations. This petition was filed in these facts and circumstances. The Petitioner examined himself as PW1 and 11 documents were marked through PW1 as Exs.P1 to P11. The first Respondent was examined as RW1 and Exs.R1 to R4 were marked through RW1. Thereafter, the second Respondent was examined as RW2 and Ex.R5 was marked through her. Each of the witnesses was cross-examined by the learned counsel for the counter party.

3. I heard the learned counsel for the Petitioner, the learned senior counsel for the first Respondent and the learned counsel for the second Respondent.

4. The learned counsel for the Petitioner submitted that the first Respondent was married to the second Respondent earlier and the minor female child, Ms.Saatvika, was born on 06.09.2009 to the first and second Respondents herein. Subsequently, they obtained a divorce in Petition No.A-1859 of 2011, by order dated 27.11.2012, from the 7th Family Court, Bandra, Mumbai, by entering into a compromise that was named and styled as an agreement of settlement, which forms a part of the consent decree.

5. The learned counsel referred to the said divorce decree. Clauses 6, 7, 8 and 9 of the said agreement of settlement were referred to and relied upon by the learned counsel for the Petitioner and the said clauses read as under:

“6. In view of the settlement herein, the permanent custody of minor daughter shall always remain with the Respondent wife and she shall be the permanent guardian of the minor daughter Saatvika for

ever.

7. The petitioner husband hereby permanently waives his right of access, visitation rights, custody and claim of guardianship to the child and he shall not make any such claim in future for any reason whatsoever.

8. In view of the fact that the petitioner is waiving rights of access, visitation rights, custody and guardianship of the minor daughter, the respondent hereby permanently waives right of maintenance for herself and for the minor daughter for the past, present and future. She shall never make any such claim in future.

9. In view of the settlement herein, the Respondent waives her right of permanent alimony and matrimonial home and she shall not make any such claim in future for any reason whatsoever.”

6. By referring to the aforesaid clauses, the learned counsel contended that the first Respondent herein agreed that the second Respondent shall have permanent custody and be the permanent guardian of the minor daughter, Ms.Saatvika, and also permanently waived his rights of access, visitation rights, custody and claim of guardianship of the child.

7. As a corollary and correlative obligation, the second Respondent herein permanently waived the right to maintenance for herself and for the minor daughter for the past, present and future. She also agreed not to make such claim in future for any reason whatsoever. The learned counsel pointed out that the said divorce decree is marked as Ex.P3. The marriage certificate as regards the marriage between the Petitioner and the second Respondent is marked as Ex.P2. The declaration by the Petitioner that he is ready and willing to be appointed as the adoptive father of the minor child and that he would provide her necessary education etc. is marked as Ex.P5. The declaration of willingness by the second Respondent is marked as Ex.P6. In the said declaration of willingness, the second Respondent stated that she married the Petitioner on 10.10.2014; that they are living happily and peacefully thereafter; that the Petitioner is taking care of the second Respondent and the minor female child, Ms.Saatvika, and is also ready and willing to adopt her as his daughter. Therefore, the second Respondent stated in the said declaration that she is consenting to the Petitioner being appointed as the adoptive father of her minor child, Ms.Saatvika.

8. The learned counsel, thereafter, referred to the counter

affidavit of the first Respondent wherein it is stated that there is a material change in the circumstances because of the remarriage of the second Respondent. By referring to the said statement, the learned counsel contended that the first Respondent is adopting a “dog in the manger” attitude and is objecting to this petition only to ensure that the minor child is not duly adopted by the person who is actually taking care of the child. This attitude is clearly not in the interest or welfare of the child. In addition, he contended that the consent of the first Respondent to the second Respondent giving the minor child in adoption may be reasonably implied from the terms of the divorce decree and, in any event, such consent is being unreasonably withheld.

9. He next referred to the cross-examination of the first Respondent. He pointed out that R.W.1 admitted that he had not provided any specific details as to the enquiries he allegedly made about his daughter. In addition, he pointed out that R.W.1 admitted that he had not specified, in his counter, the dates on which he had attempted to visit the child. R.W.1 further admitted that he knew that the second Respondent was living in Mumbai for two years after the divorce decree and that he did not attempt to meet the child during that period. In support of the entitlement of the

Petitioner, the learned counsel relied upon the judgment of the Division Bench of the Delhi High Court in **Ms.Teesta Chatteraj v. Union Of India [MANU/DE/3122/2012]** wherein, at paragraph 2, the Court set out the terms of the settlement relating to the divorce between the parties. In that case also, the father had agreed that he had no right to see the child for all time to come and that he would not interfere regarding the rearing of the child and that the wife shall have no right to claim and / or demand maintenance or alimony either for herself or for the minor child. After setting out the said facts, the Delhi High Court, in paragraph 16, considered the question as to whether the biological father can be said to have consented to the giving in adoption of the minor child. Although there was no consent at the time of adoption, the Court concurred with the conclusion of the Registrar that the biological father of the child had consented to the mother giving the child in adoption by agreeing to the terms of the compromise. The learned counsel pointed out that the Court held, *inter alia* as under:

“16. The question however still remains as to whether the biological father of the appellant can be said to have consented to the giving in adoption of the appellant. Admittedly, there is no consent at the time of adoption and the consent is attributed to the

terms of the settlement at the time of dissolution of marriage of the natural/biological parents of the appellant. The Adoption Act has not prescribed any form of such consent. In the present case, the Registrar entrusted with the duty of registration of the Adoption Deed was satisfied that the biological father of the appellant had in the compromise application aforesaid in the matrimonial proceedings given consent to the mother giving the appellant in adoption. We tend to agree with the same. As aforesaid, the appellant since her birth has never resided in the house of her biological father who, while dissolving his marriage with the mother of the appellant, gave up his right to even see the appellant for all times to come and/or to interfere in any manner with the rearing up of the appellant and also gave up his rights to the custody of the appellant. Even though the consent to the mother giving away the appellant in adoption is not expressly recorded therein but the language in our opinion is wide enough to include a consent to giving of the appellant in adoption particularly to the person with whom the mother of the appellant is now married. The consent under Section 9 can also be implied and there is no requirement of express consent or consent in writing. Reference in this regard can be made to Om Parkash v. Des Ram MANU / PH/0359/1999 where also the

adoption deed did not bear the signatures of consenting parent.”

Similarly, the Court held as under:

“23. In the present case also the biological father of the appellant has totally renounced the appellant and has not performed any of the fatherly duties. We fail to see as to how the mother can be restrained from lawfully including the appellant in her new family. Parental rights cannot be allowed to spring full blown from merely a biological connection. They require relationships more enduring. The biological connection only gives a right to develop a relationship and make contribution to child's development. However if a parent does not grasp that opportunity, does not accept any measure of responsibility , the laws and the courts will hesitate to read any such rights in favour of a parent who has failed to do so. An observation to this effect can be found in a judgment of the Supreme Court of the United States in **Abdiel Caban v. Kazim Mohammed** 441 U.S. 380 where it was observed that in those cases where the father never came forward to participate in the rearing of his child, nothing in the Equal Protection Clause would preclude the State

from withholding from him the privilege of vetoing the adoption of that child.”

10. For all these reasons, the learned counsel for the Petitioner submitted that the Petitioner is entitled to be declared as the father of the child with all consequential benefits to the child.

11. On the contrary, the learned senior counsel for the first Respondent contended that this Court does not have jurisdiction to entertain the present petition under the Juvenile Justice Act. By referring to Section 56(2) thereof, he pointed out that it enables the adoption of the child from a relative by another relative as per the provisions of the Act and the adoption regulations framed by the authority, and that the word 'relative' is defined in Section 2 (52) of the Juvenile Justice Act as a paternal uncle or aunt or maternal uncle or aunt or paternal grand parent or maternal grand parent. As per the said definition, he pointed out that the biological mother is not entitled to give the child in adoption to the step father without the consent of the biological father. Apart from adoption by a relative from another relative, as defined therein, adoption may be resorted to in cases of orphaned, abandoned and surrendered children.

12. The learned senior counsel referred to the definition of abandoned, orphaned and surrendered child under the Juvenile Justice Act. Section 2 (1), 2(42) and 2(60) contain definitions of the above terms and provide as follows:

“abandoned child” means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry”

“orphan” means a child— (i) who is without biological or adoptive parents or legal guardian; or

(ii) whose legal guardian is not willing to take, or capable of taking care of the child; and

“surrendered child” means a child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee.

13. As per the above definitions, he pointed out that the minor child of the two Respondents does not qualify as an abandoned, orphaned or surrendered child. In order to qualify as an abandoned child, the child should have been deserted by the biological or adoptive parents or guardians and declared as abandoned by the Child Welfare Committee. An

orphan is a child without biological or adoptive parents or legal guardians; or whose legal guardian is not willing to or capable of taking care of the child. A surrendered child is a child who is relinquished by the parent or guardian to the Child Welfare Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee.

14. In this case, admittedly, the child was not declared as an abandoned or surrendered child by the Child Welfare Committee. The child has both biological parents and it cannot be said that they are not willing to take care of the child. Therefore, the child is not an orphaned child. The learned senior counsel also referred to the Adoption Regulations. By referring to Regulation 4, he pointed out that three categories of children are eligible for adoption, namely:

(a) orphaned, abandoned and surrendered children who are declared legally free for adoption by the Child Welfare committee;

(b) Adoption of a child from a relative as defined under Section 2(52) of the Act; and

(c) the child or children of a spouse from an earlier marriage, who is surrendered by the biological parents for adoption by a step parent.

The learned senior counsel contended that Regulation 4(c) is not in conformity with Section 56 of the Juvenile Justice Act.

15. He next referred to Section 52 and, in particular, Clause (3) which states that in case the custody of the child is under litigation, the adoption process shall be initiated only after finalization of the case by the court concerned. In this case, the first Respondent has petitioned for custody before the Court in Mumbai and, therefore, there is a pending litigation.

16. By referring to Regulation 52(2) read with Schedule XX, the learned senior counsel contended that the consent of both the biological parents is necessary for the step parent to adopt a child. In this connection, he also referred to the model application for adoption of a child by a step parent and biological parent, which is provided in Schedule XXXII of the Adoption Regulations. In specific, he referred to clauses 5, 6 and 11 thereof. He pointed out that clause 5 refers to the consent of the other biological parent being obtained unless he is deceased. Clause 6 specifies that the biological parent and step-parent adopting the child understand that the adoption of the child would create a permanent parent-child relationship

as between the adoptive parent/s and child. Clause 11 specifies that there is no litigation for custody of the child in any court of law within the country or overseas. Based on the aforesaid, the learned senior counsel reiterated that this Court cannot exercise jurisdiction without the consent of the biological father.

17. As regards the judgment in **Teesta Chatteraj**, the learned senior counsel contended that the said judgment is in the context of inclusion of the name of the adoptive father in documents such as passports. By contrast, in this case, the Petitioner seeks a declaration that he is the father of the child. If such declaration is granted, the link between the biological father and the child would be severed forever. Therefore, he submitted that the petition should be rejected.

18. By way of rejoinder submissions, the learned counsel for the Petitioner pointed out that the welfare of the minor child is the paramount consideration of the Court. The admitted factual position is that the second Respondent had permanent custody of the child and that the Petitioner and the second Respondent have looked after the child from the year 2014 onwards when the Petitioner married the second Respondent.

Thus, the Petitioner has admittedly provided for the child's emotional, social, financial and educational needs for the last six years. In addition to the judgment in **Teesta Chatteraj**, he relied upon the judgment in **Shweta Gupta v. Rahul Keshav Jadhao [MANU/UP/2611/2017]**, wherein the Allahabad High Court relied upon the judgment in **Teesta Chatteraj** and permitted the Petitioner, namely, the mother to give the minor child in adoption to the first Respondent therein whom the Petitioner married after the annulment of her marriage with the biological father of the child. Therefore, the learned counsel for the Petitioner concluded his submissions by stating that the petition is liable to be allowed.

19. I considered the submissions of the learned counsel and the learned senior counsel for the respective parties and examined the records.

20. The first question to be considered is whether this Court has jurisdiction to entertain this petition under the Juvenile Justice Act read with the Adoption Regulations 2017 or under any other law.

21. The principal contention of the learned senior counsel for the first Respondent is that this petition is not maintainable under Section

56 of the Juvenile Justice Act. In specific, his contention is that the Juvenile Justice Act enables the adoption of orphaned, abandoned and surrendered children or the adoption of a child from a relative by another relative. In this case, the minor child, Saatvika, is not an orphaned, abandoned or surrendered child as per the definitions thereof in the relevant sub-section of Section 2 of the Act. The expression 'relative' is defined under Section 2 (52) as paternal or maternal uncle or aunt or paternal or maternal grand parent. Therefore, according to the learned senior counsel for the first Respondent, the Juvenile Justice Act does not enable the biological mother to give a child in adoption to the step father. On examining the relevant definitions, I concur with the contention of the learned senior counsel that the minor female child, Saatvika, does not qualify as an orphaned, abandoned or surrendered child. Nevertheless, it needs to be examined as to whether the second Respondent herein is entitled to give the child in adoption. The expression 'relative' is defined in Section 2 (52) of the Juvenile Justice Act as applying to the paternal or maternal uncle or aunt or paternal or maternal grand parent. This definition is relevant in the context of adoption by a relative as per Regulation 51 of the Adoption Regulations read with Schedule XIX thereof, which makes it clear that such giving in adoption may be resorted to by the biological parents to

any relative as defined in S.2(52) of the Juvenile Justice Act. Needless to say, it does not apply in this context. However, the Adoption Regulations and, in particular, Regulation 4(c) read with 52 thereof enables adoption by a step parent. Another aspect is that the custody of the child should not be under litigation. If so, the adoption process should be initiated after finalization of the case. As regards this case, the adoption process was initiated before the custody case was instituted by the biological father and, therefore, the later litigation is not a deterrent. The Petitioner and the second Respondent submitted an application in Schedule XX before the Child Welfare Committee on 22.10.2018 (Ex.R5, marked subject to objections). Although Part A of the form is required to be signed by both biological parents, in this case, it was signed only by the biological mother. The Child Welfare Committee has, however, certified in Part E that the child is legally free for adoption. Regulation 52(2) stipulates that the consent of the biological parent(s) and the step parent for such purpose should be obtained as provided in Schedule XX. When Regulation 52(2) is read with Schedule XX, it is clear that it envisages that the consent of the following is required: (i) both biological parents (Part A); (ii) the child (Part B); and (iii) both the adoptive parents (Part C). In addition, certification by the Child Welfare Committee is envisaged in Part E. Thus, if viewed as a

stand-alone petition under Section 56 of the Juvenile Justice Act read with the Adoption Regulations, this petition would not be maintainable.

22. However, the present petition is also filed under clause 17 of the Letters Patent. This Court exercises *parens patriae* jurisdiction not only under the Juvenile Justice Act read with the Adoption Regulations but also under the Letters Patent. In particular, clause 17 of the Letters Patent enables this Court to exercise jurisdiction over children and it has been held that the jurisdiction of the Court under clause 17 of the Letters Patent is all embracing and wide by the Division Bench of this Court in **Pamela Williams v. Patrick Cyril Martin** (1970 (2) MLJ 539). Therefore, I am of the view that this Court has jurisdiction to entertain this petition.

23. Notwithstanding the fact that this Court has jurisdiction, it remains to be considered whether such jurisdiction should be exercised to declare the Petitioner as the father of the child in spite of the objections of the biological father.

24. Upon examination of the agreement of settlement, I find that the first Respondent agreed to grant permanent custody and

guardianship of the minor daughter to the second Respondent herein. In addition, he agreed to permanently waive his rights of access, visitation, custody and guardianship. The second Respondent herein, consequently, agreed to permanently waive her rights of maintenance for herself and for the minor child. A divorce decree incorporated the terms thereof and by virtue of the said consent divorce decree dated 27.11.2012, permanent custody and guardianship were granted to the second Respondent and the permanent waiver and relinquishment of the first Respondent's right to access, visitation and custody was recognised. The divorce decree is in force and is not under challenge before this Court. It was admitted by the first Respondent, RW1, in his cross examination that the second Respondent continued to live in Mumbai for two years after the divorce decree was issued and that he did not endeavour to or meet the child during this period. He also admitted that he did not specify the dates on which he attempted to see the child in the counter. Thus, it is clear that the first Respondent not only agreed to waive his right of access, visitation, custody and guardianship but acted in furtherance of the said divorce decree by not visiting the child over the next eight years. It is also the admitted position that he has not provided maintenance either to the second Respondent or to the minor child on account of waiving his rights to access, visitation,

custody and guardianship. The counter before this Court also does not contain an undertaking with regard to either periodic or lump-sum monetary provision for the child.

25. Therefore, the question arises as to whether it can be concluded that the first Respondent impliedly consented to the second Respondent giving the child in adoption to the step father. In my view, clauses 6 to 9 of the agreement of settlement, which were incorporated in the divorce decree, are undoubtedly wide. I also concur with the view expressed so eloquently in paragraph 23 of the judgment in **Teesta Chatteraj** that “parental rights cannot be allowed to spring full blown from merely a biological connection. They require relationships more enduring. The biological connection only gives a right to develop a relationship and make a contribution to the child's development.” Nevertheless, one needs to weigh all relevant factors in the balance before drawing a conclusion especially because of the finality attached to adoption orders or declarations of parenthood.

26. The Court of Appeals in the UK considered an application of this nature in **In re P (a Child) [2015] 1 WLR 2927**. In that case, the applicant for an adoption order was in a stable, long-term relationship with

his partner, who was the natural mother of two children through her earlier relationships. In the statutory context of the Adoption and Children Act, 2002, which envisages consent of the natural parents for adoption by a step-parent or a dispensation of such consent by order of court, the Court of Appeal applied the principles laid down in **Soderback v. Sweden (1998) 29 EHRR 95** by the European Court of Human Rights. After distinguishing between adoption applications in the context of third party adoptions from those by a step-parent, where the child remains in the custody and care of one of the natural parents, the Court of Appeals set out the relevant considerations, namely, (a) where the non-consenting parent did not: (i) have custody of the child and did not assert responsibility for the child; (ii) have or had infrequent contact with the child; and (iii) there is a well established family unit in the home of the parent and step-parent in which *de facto* family ties have existed for a significant period. By applying these principles, the Court concluded as follows in paragraph 67:

“ It follows that I do not agree that the judge was constrained by the words of the statute, as he considered that he was, to refuse to dispense with consent. I also consider that his decision on ordinary welfare terms was wrong. The finding that, as a matter

of day to day existence, A's family life would continue in much the same way and that there were other routes by which the stepfather might gain parental responsibility, failed to engage with the benefit that adoption would bring by marrying up the legal relationships with the "de facto" relationships as they had become established within this small family unit. In almost every way the stepfather had become A's and D's father. The making of an adoption order would confirm that status as a matter of law. It would render A and D full siblings in the eyes of the law (not a factor considered by the judge in his analysis). It was the outcome that A firmly wished for. These were important, I would say crucial and determinative, matters on the facts of this case. Only adoption could achieve such an result. The other avenues by which parental responsibility might be acquired, which in any event were more limited than the judge considered as I have explained, each fell short of making the stepfather these children's "Dad". Against these real positives, the loss of legal relationship with A's father, on the facts of this case, was not in any manner out of proportion."

27. The principles laid down in **In re P (A Child)** are, without

doubt, apposite and of relevance to this case. The point of departure,

however, is that the statutory context, in the UK, expressly confers on the court the power to dispense with consent in an appropriate case. On this issue, it is pertinent to bear in mind that the House of Lords interpreted the earlier Adoption Act, 1958 in **In re D (An Infant) [1977] AC 602** and concluded that consent should be dispensed with in rare and exceptional cases and that an adoption order, which is irrevocable, should not be used to deal with practical considerations concerning custody, care and control or access. While the Letters Patent does not expressly confer the power to dispense with consent in the Indian context, I am of the view that such power is implicit in and may be resorted to, where appropriate, in the exercise of *parens patriae* jurisdiction. The other aspect is whether the consent of the biological father can be implied. Notwithstanding the wide language of the consent decree, I am of the view that consent cannot be implied, as regards adoption, because of the irrevocable consequences, namely, the permanent severance of the legal relationship of father and daughter. To that extent, I am unable to subscribe to the view expressed in **Teesta Chatteraj**. In this regard, there is another aspect that should be borne in mind: the child also has rights and such rights would have to be reckoned and preserved, if possible, so as to enable the child to make an informed decision upon attaining the age of majority.

28. Therefore, it is necessary to strike a balance by applying the test of proportionality. The minor child was about three years old when the parents divorced. Thus, the child was in the joint custody of the natural father for about three years and has always remained in the custody and care of the mother. The Petitioner married the child's mother in the year 2014 and, thereafter, the child has lived with the Petitioner for about six years. She would be about 11 years old now. While the welfare of the child takes centre stage in this adjudication, various complementary and competing rights are at issue. On the one hand, are the rights of:

- (a) the biological mother to give her child in adoption to the step father, who is *de facto* undertaking parental responsibilities;
- (b) the rights of such step father to formalise his *de facto* parenting role and ensure that the *de facto* relations of the family unit are legalised; and
- (c) the social, emotional and property benefits that flow to the child by declaring the petitioner as the father.

On the other, the rights of the biological father to preserve his legal status as father and the rights and obligations that flow therefrom. The third

dimension is the right of the child to salvage her relationship with her father at some point and/or to make claims on the basis of inheritance and succession to her natural father's estate. Another facet of this balancing process is to ask the question: are there alternative solutions that protect and preserve the competing rights while not being as irrevocable?

29. On weighing all these factors in the balance, I am of the view that this is not an appropriate case to exercise the discretion to dispense with the consent of the biological father. Instead, I find that the alternative solution of granting joint custody to the step father would legalise the *de facto* family unit to a reasonable degree without the irrevocability attached to a declaration of parenthood. Therefore, I conclude that the step father of the child, who has taken care of the social, educational, financial and emotional needs of the child, is entitled to the joint custody of the child, along with the natural mother, who has permanent guardianship and custody, as long as his marriage with the second Respondent subsists. However, at this juncture, I do not propose to declare the Petitioner as the father as this would divest the child of her rights to make a claim against her biological father if she chooses to do so upon attaining the age of majority and also irrevocably severs the relationship

between the natural father and the child. I am conscious that this has the adverse consequence of not guaranteeing the minor child the right to succession from the petitioner but this can always be taken care of by executing an appropriate instrument of *inter vivos* or testamentary disposition.

30. Another problem that this family unit may encounter is with regard to the requirement of the consent of the biological father in documents such as the passport, school and college records, etc. In **Githa Hariharan v. Reserve Bank of India (1999) 2 SCC 228**, the Hon'ble Supreme Court held that the mother can act as the natural guardian of the minor even during the life time of the father if the minor is under the exclusive care and custody of the mother. *A fortiori*, when the consent divorce decree grants permanent custody and guardianship to the mother/second Respondent, except as regards adoption, she is entitled to take all decisions on behalf of the minor without the consent of the biological father. In the facts and circumstances of this case, I propose to issue an express direction to this effect so as to ensure that statutory, educational or other authorities act on the sole instructions and consent of the second Respondent. The time has come for legislative authorities to adapt to the changing times by making appropriate legislative changes to

recognize the status of step-parents in these situations. Until such time, in exercise of *parens patriae* jurisdiction, the Court has no option but to fashion solutions that are child-centric and also provide some recognition to parental and step-parental rights. Accordingly, I dispose of this petition with the following directions:

(i) The Petitioner shall be entitled to joint custody of the minor child, Saatvika, along with the second Respondent subject to two cumulative conditions, namely, that the Petitioner and the second Respondent shall not be divorced or separated.

(ii) All statutory authorities, such as the Passport Authority, the Registrar of Births, and educational and other authorities shall not insist on the consent of or instructions of the biological father and shall act on the sole consent and instructions of the biological mother/second Respondent.

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26.05.2020

Speaking Order/Non-speaking Order

Index : Yes/No

Internet: Yes/No

kal/rrg

Petitioner's side witness:

P.W.1 : Mr.T.P.Vasanth

Respondent's side witness:

R.W.1 : Mr.R.Lakshmi Narasimhan
R.W.2 : Mrs.Sumeeta

Petitioner's side Exhibited:

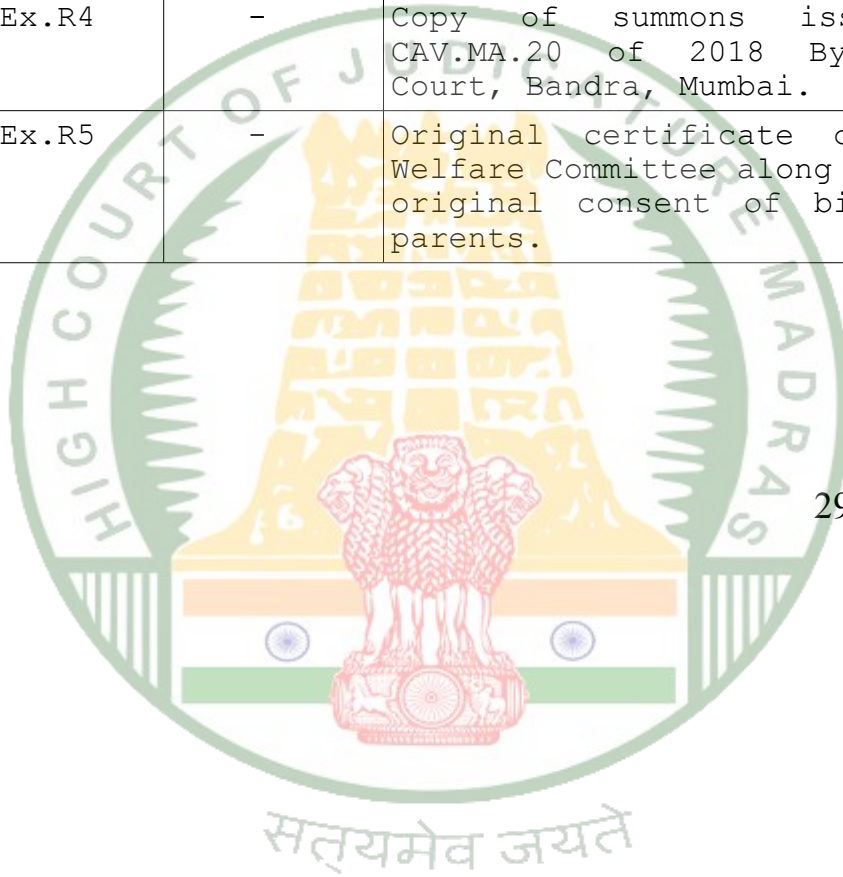
<i>Sl.No</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
1.	Ex.P1	-	Photocopy of driving license of T.P.Vasanth
2.	Ex.P2	-	Photocopy of the certificate of registration of marriage.
3.	Ex.P3	27.11.2012	Photo copy of the decree passed by the VII Family Court, Bandra, Mumbai.
4.	Ex.P4	-	Photocopy of the Aadhaar Card bearing No.455531861091
5.	Ex.P5	-	Declaration of Willingness
6.	Ex.P6	-	Declaration of willingness given by 2nd Respondent.
7.	Ex.P7	-	Photocopy of Pan Card bearing No. AGIPV4031C.
8.	Ex.P8	-	Photograph along with CD
9.	Ex.P9	-	Computer generated Income tax returns acknowledgment for the Assessment year 2017-18.
10.	Ex.P10	-	Photocopy of the birth certificate of minor Saatvik, who born on 06.09.2009.
11.	Ex.P11	-	Custody OP Petition filed by the first Respondent.

Respondent's side exhibits:

Sl.No	Exhibits	Date	Particulars of Documents
1.	Ex.R1	-	Photo copies of letters of correspondence.
2.	Ex.R2	07.02.2018	Premium Payment receipts issued by TATA AIA
3.	Ex.R3	-	Medical Insurance card for the period from February 2016 to January 2017.
4.	Ex.R4	-	Copy of summons issued in CAV.MA.20 of 2018 By Family Court, Bandra, Mumbai.
5.	Ex.R5	-	Original certificate of Child Welfare Committee along with the original consent of biological parents.

rrg/kal

29.05.2020



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SENTHILKUMAR RAMAMOORTHY, J

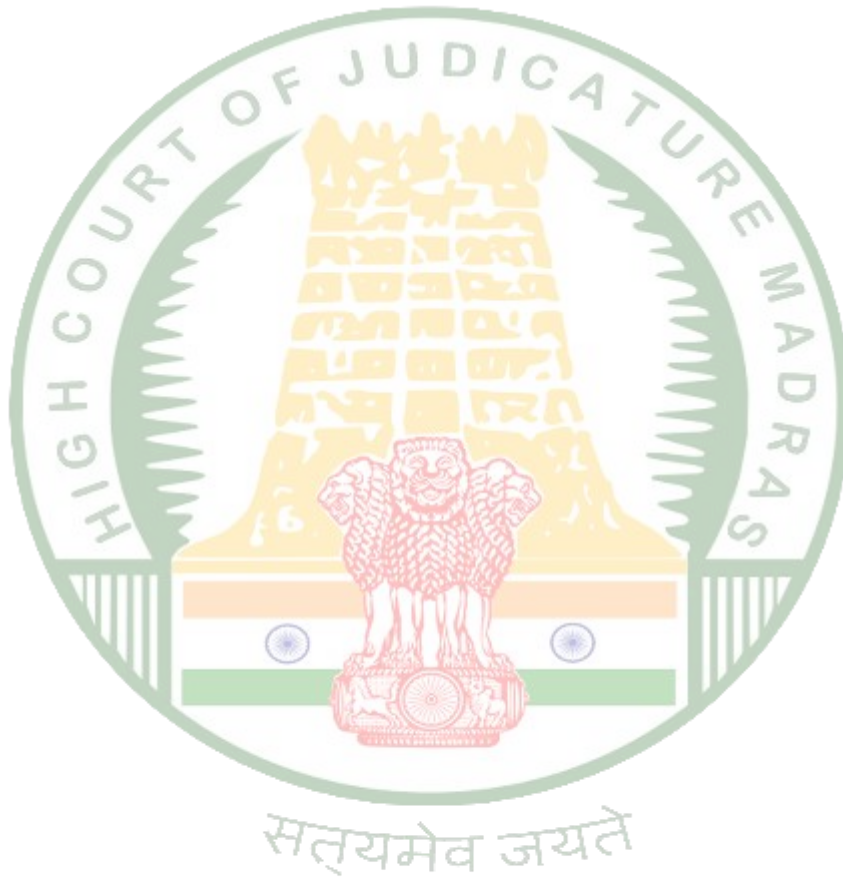
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