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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.08.2021

PRONOUNCED ON : 27.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.NO.8020 OF 2021

AND

W.M.P.NO.8569 OF 2021

R.Subashini

.. Petitioner

..Vs..

1.The Inspector General of Registration
Santhome High Road,
Chennai - 28.

2.The District Registrar,
Admin, Tindivanam.

3.The Joint Sub-Registrar No.1
Tindivanam.

4.M.Pasupathi

5.P.Maheswari

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to Adoption Cancellation Deed dated 28.04.2004 registered as Document No.25 in Book No.IV of the year 2004 on the file of the 3rd respondent and quash the same and consequently remove all the entries relating to the cancellation of adoption from the Books of the Registration Department in the office of the 3rd respondent.

For Petitioner : Mr.N.Suresh

For RR1 to R3 : Mr.K.M.D.Muhilan
Government Advocate.

For R4 & R5 : Mr.T.R.Rajaraman



ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus to call for the records relating to the Adoption Cancellation Deed dated 28.04.2004 registered as Document No.25 in Book No.IV of the year 2004 on the file of the 3rd respondent / the Joint Sub-Registrar No.1, Tindivanam and quash the same and remove all entries relating to the cancellation of adoption.

2.In the affidavit filed in support of the writ petition it had been stated that the petitioner was born to the 4th and 5th respondents on 28.05.1984. When she was 13 years, she was given in adoption on 06.10.1997. A religious ceremony relating to adoption took place and the adoption was also registered by a Document dated 06.10.1997 in the office of the Joint Sub-Registrar, Tindivanam. The petitioner herein had thus become the child of her adoptive father and mother. She did her schooling from the house of her adopted parents. Her adoptive father died on 25.12.2004. She obtained legal heirship certificate in which she and her adoptive mother were shown as legal representatives. She and her adoptive mother also entered into a registered Partition Deed dated 26.12.2016. She was described as a legally adopted daughter. Her adoptive mother died on 26.04.2019. She again obtained a legal heirship certificate on 30.07.2019.

3.She then stated that she married on 24.05.2004. She stated that at that point of time there were some differences of opinion with respect to the said marriage between herself on the one hand and her biological parents and adoptive parents on the other hand. She however claimed that subsequently, during the time when she conceived and gave birth to a child her adoptive mother was beside her.

4.She then found out that a cancellation of adoption deed had been executed on 28.04.2004 and in the said deed it had been stated that the biological and adoptive parents did not approve of her choice of her husband and had decided to cancel the adoption. That deed of cancellation was registered as Doc.No.25/2004, on 28.04.2004 by the 3rd respondent, Joint Sub-Registrar No.1, Tindivanam. Seeking interference with such deed which according to the petitioner was perse illegal and nonest the present writ petition has been filed.

5.Heard arguments advanced by Mr.N.Suresh, learned counsel for the petitioner and Mr.K.M.D.Muhilan, learned counsel for the 1st, 2nd and 3rd respondents and Mr.T.R.Rajaraman, learned counsel for the 4th and 5th respondents / Biological Parents.



6. Section 5(1) of the Hindu Adoption and Maintenance Act, 1956, is as follows:

"5. Adoptions to be regulated by this Chapter-
(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void."

7. Section 6 of the Hindu Adoption and Maintenance Act, 1956, is as follows:

6. Requisites of a valid adoption- No adoption shall be valid unless-

- (i) the person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

8. Section 11 (ii) and (vi) of the Hindu Adoption and Maintenance Act, 1956, is as follows:

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

ii) if the adoption is of a daughter the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

.....
.....

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption.

Provided that the performance of datta homan, shall not be essential to the validity of an adoption."

9. Sections 12, 15 and 16 of the Act, are as follows:



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"12. Effect of adoptions- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. Provided that-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

15. Valid adoption not to be cancelled:-

No adoption which had been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

16. Presumption as to registered documents relating to adoption:-

Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

10.The above provisions give the requirements of a valid adoption and more importantly under Section 12 of the Hindu Adoptions and Maintenance Act, 1956, it had been categorically provided that if a adoption had taken place in accordance with the provisions of the Act, then the adopted child shall be deemed to be the child of her adoptive parents for all purposes.

11.Under Section 15 of the Act, an adoption which had been validly made cannot be cancelled, and even the adopted child cannot renounce her status and return to the family of her birth.

12.Under Section 16 of the Act, any document which had been presented relating to adoption must be presumed to hold that the adoption had been made in compliance with the provisions of the



act.

13. There is a proviso in Section 12 of the act namely, proviso (a) which had been extracted above and it is repeated again,

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

14. This provision has to be read in conjunction with the Hindu Marriage Act, 1955.

15. Section 5 (iv) (v) of the Hindu Marriage Act, 1955 is as follows:

"5. Conditions for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

.....
.....

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;"

16. In the very same Act, Section 3 (c), (d), (e), (f) and (g) are as follows:

"3. Definitions.—In this Act, unless the context otherwise requires,—

.....
.....

(c) "full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

(d) "uterine blood"—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands; Explanation.—In clauses (c) and (d), "ancestor" includes the father and "ancestress" the mother;

(e) "prescribed" means prescribed by rules made under this Act;



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(f) (i) "sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

(ii) two persons are said to be "sapindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;

(g) "degrees of prohibited relationship"-two persons are said to be within the "degrees of prohibited relationship"-

(i) if one is a lineal ascendant of the other; or

(ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or

(iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or

(iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Explanation.-For the purposes of clauses (f) and (g), relationship includes- (i) relationship by half or uterine blood as well as by full blood; (ii) illegitimate blood relationship as well as legitimate; (iii) relationship by adoption as well as by blood; and all terms of relationship in those clauses shall be construed accordingly."

17.It is thus seen that when we examine the proviso (a) to Section 12 that Hindu Adoptions and Maintenance Act, 1956, that an adopted person cannot marry any person whom she could not have married, if she had continued in the family of her birth would only indicate that she even though adopted she cannot marry any person who was her sapinda or blood relation or was in a degree of prohibited relationship, if she had continued to be in the family of her biological parents. That restriction continues even after she is given in adoption.

18.In the instant case, a reading of the cancellation deed now questioned in the writ petition shows that the cancellation deed had been entered into because the biological parents and the adoptive parents were not agreeable to the petitioner marrying a person of her choice. That individual incidentally



was not a person within the prohibited relationship as stipulated in the Hindu Marriage Act, 1955. He in fact belonged to a different caste. A Hindu female has a right to marry any person in accordance to her wish and the only restriction are those restrictions as aforesaid in the Hindu Marriage Act, 1955. Marrying a person of her choice cannot be a ground for canceling an adoption deed.

19. It must be kept in mind that the writ petitioner, as a citizen of India is vested with substantial fundamental rights from actually the date when she was in the womb of her mother. She cannot be treated as a chattel to be handed over to another family and thereafter, such handing over be canceled at the whims and fancies of her Biological / Adoptive parents. She has the right to live with dignity.

20. When the Hindu Adoptions and Maintenance Act, 1956, prohibits that even she cannot even renounce her status, her Biological / Adoptive parents cannot also seek to cancel the adoption. Such an act is prohibited in law. It affects the very dignity of the individual. The fundamental right to live with dignity cannot be taken away by mere registration of a cancellation deed of a lawful and valid adoption.

21. By such cancellation, the fundamental right of the writ petitioner to live with dignity had been directly encroached. Execution and registration of an adoption cancellation deed is prohibited and is against the public policy of the State.

22. While examining such cancellation deed it is not merely sufficient that this Court should confine itself within the narrow confinements of Section 35 of the Registration Act, 1908 and Rule 55 of the Tamil Nadu Registration Rules, 1983.

23. In (2016) 1 CTC 673, Asset Reconstruction Company (India) Limited, represented by its Manager, Mr. Nirav Parek, The Ruby 10th Floor, Senapathi Bapat Marg, Dadar (West), Mumbai-400 028 Vs. The Inspector General of Registration, No.100, Santhome High Road, Chennai - 600 028 and others, a learned Single Judge of this Court with respect to Power of Attorney held as follows:-

"30. Thus, when the presentation on the face of it is unauthorised, it can never be any registration giving an iota of recognition through the official act. Rule 22 of the Registration Rules under Chapter VII deals with presentation and examination of documents. When we speak about examination of document, the registering officer will have to examine its contents as stated therein. Similarly, Rule 55 speaks about enquiry



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before registration. Such an enquiry is not to be made only on title, but must necessarily include the verification of the facts as stated in the document sought to be registered. Though Rule 55 derives power under Section 35 of the Registration Act, it throws light on the scope and power of the Registering Officer. Therefore, what is required is only examination of the contents of the document, which would also include the source for executing the document. The source, being a power deed, such an examination would not be construed as one of title. It is only to check as to whether the document, which forms the basis of execution of the sale deed, empowers the executant to do so or not. After all, there is no dispute since the title and execution are not denied as the executant seeks registration based upon that document alone. When there is no valid execution, the deed becomes void as there is no executant. Thus, registration of such a deed also would become void."

24. In this case, the cancellation deed is prohibited by law. The registration is therefore violative of the provisions of law. It is a void document, it has no effect.

25. In J. Jayaniithaa V. Inspector General of Registration and others reported in 2021 (1) CTC 839, a learned Single Judge had, while holding a registered Settlement Deed as non-est, directed that the order of the Court shall be presented for registration before the jurisdictional Sub-Registrar, who shall register the same on payment of necessary stamp duty and registration charges. It was observed that by such registration all earlier entries made with respect to the said document will get automatically reversed.

26. In view of the position of law that a document which has been registered cannot be canceled, I would give liberty to the writ petitioner to present this order for registration and an obligation is placed on the jurisdictional Sub-Registrar, particularly, the 3rd respondent, to register this order in accordance with rules. By this order, it had been very specifically held that the cancellation of adoption deed dated 28.04.2004 registered as Document No.25 in Book No.IV of the year 2004 by the Joint Sub-Registrar No.I, Tindivanam, is a void document. Necessary entries have to be made in the office of the 3rd respondent that the said document has been declared to be void by this order of this Court. This order of this Court must be registered and such entry must be made in the books maintained by the 3rd respondent.



27. With the above observations, the Writ Petition is allowed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

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Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar

smv

To,

1. The Inspector General of Registration
Santhome High Road,
Chennai - 28.

2. The District Registrar,
Admin, Tindivanam.

3. The Joint Sub-Registrar No.1
Tindivanam.

+1 cc to M/s.N.Suresh, Advocate, Sr.No.43519

W.P.No.8020 of 2021
and
W.M.P.No.8569 of 2021

PMK (CO)
PM(07/09/2021)