

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2146 of 2021

1. Sau.Chhaya w/o Bandu Yelgalwar,
Age 47 years, Occupation-Household.
R/o. Prabhag No.1, Matoshri Nagar,
Wanadongri, Nagpur, District Nagpur.
2. Shri Bandu Shamrao Yelgalwar,
Age 52 years, Occupation-Private,
R/o. Prabhag No.1, Matoshri Nagar,
Wanadongri, Nagpur, District Nagpur.

..... **PETITIONERS**

...VERSUS...

1. State of Maharashtra, through its Secretary,
Department of Women and Child Development,
Mantralaya, Mumbai -32.
2. District Women and Child Development Officer,
Gadchiroli.
3. Deputy Inspector General of Registration and
Deputy Control of Stamps,
Having its Office at opposite Vidhan Bhawan,
Ground Floor, Council Hall, Pune, Dist. Pune.
4. Sub-Registrar, Chamorshi.
Tahsil Chamorshi, District Gadchiroli.

..... **RESPONDENTS**

Shri R.R.Vyas, Advocate for petitioners.
Shri N.S.Rao, Assistant Government Pleader for respondents.

CORAM : SUNIL B. SHUKRE AND SMT. M.S.JAWALKAR, JJ.
DATE : 5th MAY, 2022

ORAL JUDGMENT (Per SUNIL B. SHUKRE, J.)

Heard.

Leave to amend the petition by inserting an averment in paragraph 7 regarding the adoption having been made in accordance with the provisions of the Hindu Adoption and Maintenance Act, 1956 is granted.

Amendment be carried out forthwith.

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1. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.
2. We are satisfied that the adoption in question of child - Ritik Gitesh Pipre, has been completed in accordance with the provisions of Hindu Adoption and Maintenance Act, 1956 (for short, the Act of 1956). The said child has been adopted by the adoptive parents i.e. the petitioners from the natural biological parents of the child. These facts clearly indicate that the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, the Act of 2015) has no application to the adoption deed involved in this case. This can be seen from the expression made in Sub-section (3) of Section 56 of the

Act of 2015, which is reproduced below for the sake of convenience.

“56. Adoption :

(1)

(2)

(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 (78 of 1956).”

Thus, it is clear that the provisions of the Act of 2015 are not applicable to the adoption involved in this petition.

3. Of course, under Section 17 of the Registration Act, 1908 (for short, the Act of 1908), the registration of the adoption deed is not compulsory. But, it is a document which can be registered in terms of Section 18 sub-clause (f) of the Act of 1908. There are distinct advantages attached to the registration of adoption deed under Section 16 of the Act of 1956. Section 16 of the Act of 1956 prescribes that whenever any adoption deed is duly executed by the parties and is registered, the Court shall presume that the adoption has been made in compliance with the provisions of the Act of 1956, until the presumption is rebutted, when such a deed is called before any Court of law. Therefore, we find that the Sub-Registrar, Gadchiroli, could not have directed the parties to first comply with the provisions of Section 56 of the Act of 2015 before adoption deed is registered by him. In fact, the procedure laid down under Section 56 of the Act of 2015 operates in a field which is different than

the procedure which is required to be followed, in case the adoption deed is executed in terms of the provisions of the Act of 1956.

4. We thus find that the communication dated 16.01.2020 issued by the respondent no.2 is required to be clarified by stating that it shall not apply to any adoption which is made in terms of the provisions of the Hindu Adoption and Maintenance Act, 1956, which we do so.

5. In the result, the writ petition is allowed. Rule is made absolute in above terms. There shall be no order as to costs.

(SMT. M.S.JAWALKAR, J.)

(SUNIL B. SHUKRE,J.)

Andurkar..