



O.S.A.No.202 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice D.BHARATHA CHAKRAVARTHY

O.S.A.No.202 of 2022

1.C.Duraisamy
2.D.Hemalatha

.. Appellants / Petitioners

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against the order dated 25.03.2022 made in O.P.No.114 of 2022.

For Appellants : Mr.CPG.Yoganand

JUDGMENT

(Delivered by D.BHARATHA CHAKRAVARTHY.,J)

1. This appeal is directed against the order of the learned Single Judge dated 25.03.2022 in O.P.No.114 of 2022 in and by which the learned Single Judge dismissed the original petition filed by the appellants / petitioners under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2015.



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2. The first appellant is the step-father of the minor child. The second appellant is the biological mother of the minor child. The minor child namely D.Mirdhula was born on 27.07.2006 to the second appellant, namely, D.Hemalatha, out of the wedlock with one J.Dinesh who had since passed away in an accident. Thereafter, the second appellant got married to the first appellant on 21.04.2011. They have also got another daughter out of the wedlock. Now, the first appellant, the second appellant and both the minor daughters are living as family under one roof ever since their marriage. It is under these circumstances, the first appellant being the step-father has adopted the minor child and for the purposes of recording the said factum of adoption and for consequential reliefs in tune with Section 52 of the Act and Regulation 36 of the Adoption Regulations, 2017, filed this Original Petition.

3. The learned Single Judge rejected the petition *inlimini*, on the ground that in present times there are several cases arising under the POCSO Act against the step-fathers and, therefore, such an application can not be ordered.



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4. We find that, the order of the learned Single Judge is not passed on the facts of this particular case but on general reasoning. We find that on the facts and circumstance of the instant case, the first appellant being the step-father has been duly raising the minor child along with the second appellant with all due care and affection and there is no complaint whatsoever in the instant case. In that view of the matter, we find that the order of the learned Single Judge is unsustainable. Earlier, by our order dated 20.09.2022, we directed recording of evidence before the learned Master and the matter was posted today.

5. Accordingly, evidence was duly recorded before the Master and the first appellant was examined as P.W.1 and exhibits P1 to P27 were marked. The second appellant was also examined as P.W.2.

6. We have perused the evidence on record and the documents that are marked. The exhibits clearly prove the identity of the parties, their inter-se relationship. the fact that they have been residing at No.392, 21st Street, N.S.K. Nagar, Arumbakkam, Chennai - 600 106 under the same roof as one single family and the minor



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daughter has so far been taken care by both the appellants herein. We are also satisfied about the fact of adoption. There is no other impediment whatsoever or any legal embargo to deny the adoption. The application is filed by the step-father and the natural mother jointly under Section 52 of the Act. In that view of the matter, we feel that it is a fit case for allowing the prayer of the appellants.

7. In the result:-

(i) The O.S.A.No.202 of 2022 stands allowed.

No costs.

(ii) The order of the learned Single Judge dated 25.03.2022 in O.P.No.114 of 2022 is set aside and consequently O.P.No.114 of 2022 is allowed, on the following terms :

(a) The first appellant is declared as the father of the minor child for all purposes;

(b) The concerned State Educational and other Authorities shall alter/henceforth mention the father's name of the minor child - D.Mirdhula as that of the first appellant - C.Duraisamy in all the



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necessary certificates and registers and other official records;

(c) The Authorities under the Registration of Births and Deaths Act, 1969 shall also issue a fresh / corrected birth certificate by incorporating the name of the first appellant/petitioner C. Duraisamy, also as the parent of the minor child Mirdhula, as per Regulation 36 of the Adoption Regulations, 2017.

(P.U., J) (D.B.C., J)
27.10.2022

Index:Yes
ssm/30

To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.



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PARESH UPADHYAY, J.
and
D.BHARATHA CHAKRAVARTHY, J.

ssm

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