



C.R.P(MD)No.842 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.842 of 2023

and

C.M.P(MD)No.3888 of 2023

1.S.Stalin

2.A.G.Latha Kumari

...Revision Petitioners/
Petitioners

Vs.

1.S.Ajin

2.R.Reka

... Respondents/Respondents/

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to direct the learned Principal District Court, Kanyakumari District at Nagercoil to number the unnumbered A.D.O.P.No.--- of 2022.

For Petitioner : Mr.M.R.Sreenivasan

ORDER

The petitioners have filed this Civil Revision petitioner under Article 227 of Constitution of India to direct the Principal District Court,



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Kanyakumari District at Nagercoil to number the unnumbered
ADOP.No... of 2022.

2. Originally, the petitioners had filed ADOP before the Family Court, Nagercoil, on 07.06.2022 under Section 9(2) of the Hindu Adoption and Maintenance Act, 1956. The ADOP was returned for proper presentation before the Court within whose jurisdiction, the case was to be filed.

3. Under these circumstances, the petitioners represented the ADOP before the Principal District Court, Kanyakumari, on 07.08.2022.

4. ADOP has been now returned by the said Court pointing out that under the notification issued under Juvenile Justice (Care and Protection of Children) Act, 2015 as amended by Juvenile Justice (Care and Protection of Children) Act, 2021, which came into force on 01.09.2022, the petitioners should represent the ADOP before the proper authority.



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5. The learned counsel for the petitioner has also placed reliance on a decision of the Kerala High Court in **Thomas.P Vs State of Kerala**, which deals with an identical situation.

6. It is prayed that the Court may be directed to number the ADOP filed by the petitioners under Section 9(2) of the Hindu Adoption and Maintenance Act, 1956. Section 9(2) of the Hindu Adoption and Maintenance Act, 1956 reads as under:-

"9 Persons capable of giving in adoption. —

(2) Subject to the provisions of 4 [sub-section (3) and sub-section (4)], the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

7. Section 5 of the Hindu Adoption and Maintenance Act, 1956, reads as under:-

"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.*

(2) *An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth."*



8. I have considered the arguments advanced by the learned counsel for the petitioner.

9. I have also considered the decision of the High Court of Telangana in the case of ***Kommuri Srinivas and others Vs The State of Telangana and others*** rendered in the context of the Hindu Adoption and Maintenance Act, 2017. A specific reference is made to Paragraph Nos.17 and 19, which reads as under:

"(17) In the light of the clear analysis and categorical declaration of law by the Supreme Court as well as the High Court of Delhi, High court of Kerala and the High Court of Punjab and Haryana, in the absence of there being unimpeachable and absolute material for the respondent authorities to say that the adoption claimed by the petitioners to be sham and not acceptable, is totally unreasonable and arbitrary and without there being any basis. The understanding of the authorities that 2017 Regulations would apply with respect to every adoption and the adoptions can be made only under the 2017 Regulations is only on account of misinterpreting the provisions and on account of the improper understanding of the width and scope of the Juvenile Justice Act and Regulations vis-à-vis provisions of HAMA.

(19) The restrictive scope of Juvenile Justice Act, and inapplicability of the same to the adoptions made under the HAMA Act were noticed and elaborately dealt by a Division Bench of Kerala High Court and the Punjab and Haryana High Court, apart from the clear and ample guidance provided in the judgment of the Supreme Court in M/s Shabnam Hashmi v. Union of India AIR 2014 SC 1281. Further the Delhi High court in PKH v. Central Adoption Resource Authority⁶ in categorical terms held that a Hindu child who is offered and accepted in adoption under Hindu Adoptions and Maintenance



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Act, 1956, by no stretch of imagination, can be termed as a surrendered child."

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10. The decision was rendered after referring to the decision of the Hon'ble Supreme Court in the case of ***Shabnam Hashmi Vs Union of India and others***. I have also perused the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. The adoption under the aforesaid Act was under specified circumstances therein. The Court held as under:

"13. The JJ Act, 2000, as amended, is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the Act, Rules and the CARA guidelines, as notified under the Act. The Act does not mandate any compulsive action by any prospective parent leaving such person with the liberty of accessing the provisions of the Act, if he so desires. Such a person is always free to adopt or choose not to do so and, instead, follow what he comprehends to be the dictates of the personal law applicable to him. To us, the Act is a small step in reaching the goal enshrined by Article 44 of the Constitution. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. At the cost of repetition we would like to say that an optional legislation that does not contain an unavoidable imperative cannot be stultified by principles of personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a uniform Civil Code is achieved. The same can only happen by the collective decision of the generation(s) to come to sink conflicting faiths and beliefs that are still active as on date."



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11. Juvenile Justice (Care and Protection of Children) Act, 2000 has been repealed. It has been replaced by Juvenile Justice (Care and Protection of Children) Act, 2015. The right of adoption to a family to adopt orphaned/abandoned and surrendered children is specified in Juvenile Justice (Care and Protection of Children) Act, 2015. Sub Section 3 to Section 56 of the Juvenile Justice (Care and Protection of Children) Act, 2015 makes it clear that the Act does not apply to adoption of children made under the provisions of Hindu Adoption and Maintenance Act, 1956.

12. The petitioners are attempting to legalise the adoption of their niece as their child and have filed A.D.O.P. before the Family Court, Kanyakumari, Nagercoil. The preamble of the petition that has been filed by the petitioner indicates that the petitioners are filing A.D.O.P. under Section 9 (2) of the Hindu Adoption and Maintenance Act, 1956.

13. Although, the Court has returned the A.D.O.P. by directing the petitioner to approach the authorities under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, the provisions of the



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Juvenile Justice (Care and Protection of Children) Act, 2015 applies only to an abandoned child, an orphan child and/or a surrendered child as defined in Section 2 (1), 2 (42) and 2 (60) respectively of the Juvenile Justice (Care and Protection of Children) Act, 2015. The child who has been adopted vide Adoption Deed dated 30.06.2021 registered as Document No.20 of 2021 before the Sub Registrar, Munchirai is not an abandoned child or an orphan child or a surrendered child as defined in Section 2 (1), 2 (42) and 2 (60) respectively of the Juvenile Justice (Care and Protection of Children) Act, 2015. As mentioned above, adoption by the petitioners is governed by the provisions of the Hindu Adoptions and Maintenance Act, 1956. If at all it is open for the petitioner to invoke the jurisdiction of the civil Court under Section 9 of C.P.C for declaring that the petitioners have adopted the child in respect of which the petitioners have also entered into the adoption deed with the parents of the child on 30.06.2021 vide registered Document No.20 of 2021 before the Sub Registrar, Munchirai.

14. Therefore, I am inclined to dispose of the present civil revision petition by giving liberty to the petitioners to workout their remedy under Section 9 of C.P.C., before the Principal District Court, Nagercoil,



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Kanyakumari District. The petitioners are given liberty to represent the ADOP as a suit under Section 9 of C.P.C., before the Principal District Court, Nagercoil, Kanyakumari District. The Principal District Court, Nagercoil, Kanyakumari District, is directed to number the suit and dispose of the same as expeditiously as possible preferably within a period of 6 months from the date of receipt of copy of this order.

15. The present Civil Revision Petition stands disposed of with the above liberty. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note: Registry is directed to return the original impugned order copy to the learned counsel for the petitioner.

To

- 1.The learned Principal District Court,
Kanyakumari District at Nagercoil
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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