



2023:DHC:9186



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19.12.2023

+ **CM(M) 1985/2023**
SHIMPY SHARMA

..... Petitioner

Through: Mohd. Aman Khan Afghani
and Mohd. Arham, Advs. along
with petitioner (through VC)

versus

STATE OF NCT DELHI & ANR. Respondents

Through: Ms.Rachita Garg, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner challenging the Order dated 04.11.2023 passed by the learned Judge, Family Court-01, South-East District, Saket Courts, Delhi (hereinafter referred to as 'Family Court') in GP No. 98/2023, titled *Shimpy Sharma v. The State of NCT Delhi & Ors.*, whereby the learned Family court directed the petitioner herein to *inter alia* implead the biological parents of the minor child as party-respondents.

2. It is the case of the petitioner that the child was adopted by the petitioner's deceased brother and sister-in-law on 11.09.2019 through a Registered Adoption Deed. Unfortunately, on 08.08.2022, the brother of the petitioner died due to natural reasons. The sister-in-law



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of the petitioner also died on 11.09.2023. They have left behind the child, the petitioner herein, and the mother of the petitioner, who is aged about 68 years old, and is living with the petitioner. The petitioner has thereafter taken the custody of the child and filed the abovementioned petition, that is, GP No. 98/2023 under Section 10 of the Hindu Minority and Guardianship Act, 1956, praying for her to be declared as the guardian of the child.

3. The learned counsel for the petitioner submits that the biological parents of the child, having already given the child up for adoption to the petitioner's brother and sister-in-law, no longer have any say in the matter of guardianship of the child. He submits that, therefore, they are neither necessary nor proper parties in the abovementioned petition. In support, he places reliance on Sections 12 and 15 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as 'HAMA').

4. I find merit in the submission made by the learned counsel for the petitioner.

5. Section 12 of the HAMA states that on adoption, the adopted child shall be deemed to be the child of his or her adoptive parents for all purposes, and all 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.

6. Section 15 of the HAMA states that no adoption which is validly made can be cancelled by the adoptive parents 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.



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7. In the present case, the learned Family Court, without appreciating the above provisions and in a cursory manner, has passed the Impugned Order directing the petitioner to implead the biological parents of the minor child, observing that they appear to be necessary parties.

8. The said Order, therefore, cannot be sustained. It is accordingly set aside. However, during the course of the proceedings, if at any stage, the learned Family Court considers it appropriate or necessary to have a say of the biological parents in the petition, it shall always be open to the learned Family Court to pass such appropriate orders in accordance with law and for reasons to be recorded.

9. The petition is allowed in the above terms.

NAVIN CHAWLA, J

DECEMBER 19, 2023/ns/am

Click here to check corrigendum, if any