



W.P.(MD)No.23102 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2024

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.23102 of 2024

and

W.M.P.(MD)No.19583 of 2024

G.Sangeetha

... Petitioner

Vs.

The Sub Registrar,
Joint-2 Sub Registration Office,
Palani, Dindigul District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the Respondent pertaining to the impugned order made in Refusal Number. RFL/Joint-2 Sub Registrar, Palani/87/2024 dated 04.09.2024 on the file of the respondent and quash the same as illegal and arbitrary and consequently direct the respondent to register the petitioner adoption deed dated 03.09.2024 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.A.D.Ganeshamoorthi
For Respondent : Mr.C.Satheesh
Government Advocate

ORDER

This writ petition has been filed challenging the order refusing to register the adoption deed presented by the petitioner.



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2.The case of the petitioner is that she married one Sathish on 02.04.2017 and a male child was born on 01.12.2018. Thereafter, due to the matrimonial dispute, the husband of the petitioner filed a divorce petition and the same is pending. Thereafter, she developed relationship with one Sivakumar. Due to that relationship, one female child was born on 19.03.2024. After that the said Sivakumar absconded, till today and his whereabouts is not known. As the petitioner is not in a position to take care of the child, she decided to give the child on adoption to one Sakthivel & Annakodi. In this regard, an adoption deed was also executed and presented for registration. However, the same was refused to be registered on the ground that the father of the child has not signed in the adoption deed.

3.Heard the learned counsel appearing on either side and perused the materials placed on record.

4.The child is born to the petitioner in an illegal relationship with one Sivakumar. It is the specific stand of the petitioner that the said Sivakumar is absconding and his whereabouts is not known. The child sought to be given in adoption is now six months old. The person, who takes the child in adoption,



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also does not have any other female child born to them as on today, as per the affidavit of the petitioner.

5.As far as the illegitimate child is concerned, as per Section 6 of the Hindu Minority and Guardianship Act, the mother is the legal guardian. As far as the adoption is concerned, it is governed under Chapter II of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as 'the Act'). Section 9 of the Act makes it very clear that the father or mother or the guardian of a child shall have the capacity to give the child in adoption. Section 9(2) of the Act makes it very clear that the father or the mother, if alive, shall have equal right to give a son or daughter in adoption. The only restriction is that such right shall not be exercised by either of them save with the consent of the other unless one of them 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.

6.In view of the above legal position, the question of obtaining consent in this case does not arise at all. The child is not born in a lawful marriage and it was born to the petitioner through the illegal intimacy with one Sivakumar. Now, he is absconded and his whereabouts is not known. Hence, it has to be



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considered that the said Sivakumar, totally abandoned the petitioner and the child. In such situation, the petitioner /mother being the guardian of the illegitimate child, has every right to give the child in adoption. Further, the other parameters are also satisfied that the adoptive parents do not have any other female child as per the affidavit as on the date of adoption and they are capable of taking the child in adoption.

7.Further, it is to be noted that it is not the case of the respondent that the child was abandoned or it was in the need of care to apply the provisions of the Juvenile Justice Act. Only when the child is under need of care or abandoned by the parents, the question of surrendering the child to the Welfare Committee or the Juvenile Justice Board, will arise. Whereas, in the case on hand, the mother had retained the custody of the illegitimate child for all these months. Therefore, the question of applying the provisions of the Juvenile Justice (Care and Protection) Act will not apply.

8.In such view of the matter, the case is squarely covered only under the Hindu Adoptions and Maintenance Act. The mother as a guardian of the illegitimate child as per 6 of the Hindu Minority and Guardianship Act, has the capacity to give the child in adoption as per Section 9(1) of the Act. In a similar



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circumstances, this Court in the case of **Ashok Kumar vs. The Inspector**

General of Registration and others [W.P.(MD)No.8416 of 2024, dated

13.06.2024], had held as follows:

6.The expression “after” occurring in Section 6(a) of the Hindu Minority and Guardianship Act, 1956 was considered by the Hon'ble Supreme Court of India in *Githa Hariharan v. RBI* (1999) 2 SCC 228. It was held therein that the word “after” need not necessarily mean “after the lifetime”. It would mean “in the absence of”, the word “absence” referring to the father's absence from the care of the minor's property or person for any reason whatsoever. If the father is wholly indifferent to the matters of the minor and the mother is exclusively in charge, the father can be considered to be absent and the mother can be recognized as natural guardian and she can act validly on behalf of the minor. The very same approach can be adopted in the present case also. “A” was born on account of the illicit intimacy between “K” and “X”. “X” though alive is absent for all practical purposes in the life of “A” and it is the biological mother who is in charge of his person. In these circumstances, “K” cannot be called upon to obtain the consent of “X”. I hold that the proviso to sub-section (2) of Section 9 of the Hindu Adoptions and Maintenance Act, 1956 will not apply when the mother/father of the child to be given in adoption is absent in the sense laid down in *Githa Hariharan's* case.”



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9. Accordingly, this writ petition is allowed and the refusal made by the respondent in RFL/2/Joint-2 Sub Registrar, Palani/87/2024, dated 04.09.2024 is set aside. The respondent is directed to register the adoption deed within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

03.10.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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To

The Sub Registrar,
Joint-2 Sub Registration Office,
Palani, Dindigul District.



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N.SATHISH KUMAR, J.

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