

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1004 OF 2025

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SUBHASH
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Date: 2025.02.24
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Archana Sagar Thakur and Others

...Petitioners

vs.

Raja Ramesh Raut and Others

...Respondents

Mr. Ravindra Kadam, for the Petitioners.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 18, 2025

P.C:

1. Heard the learned counsel for the parties.
2. This petition under Article 227 of the Constitution of India assails the legality and correctness of the order dated 1st October, 2024 passed by the learned District Judge, Panvel whereby the application preferred by the petitioners seeking declaration that the adoption of Master S by the petitioners (adoptive parents) from the respondents (biological parents) was legal, valid and subsisting and the consequential orders, came to be rejected.
3. The marriage of petitioner Nos. 1 and 2 was solemnized on 12th December, 2014. The petitioners have no issue out of the wedlock. Respondent No. 1 is the brother of petitioner No. 1. Respondent No. 2 is the wife of respondents No. 1. They have two sons. Master S was born on 10th April, 2023. The petitioners, thus, decided to adopt Master S. An adoption ceremony was held in which

Master S was adopted by the petitioners from the respondents. A Memorandum of Understanding For Adoption was executed on 27th June, 2023.

4. The petitioners thus filed application, being Civil Misc. Application No. 92 of 2023, seeking declaration of valid adoption. The parties filed affidavits in support of the application. By the impugned order, the learned District Judge was persuaded to reject the application as the Deed of Adoption styled as MOU for adoption was not a registered instrument and the oral evidence was not sufficient to prove the factum of adoption.

5. Mr. Ravindra Kadam, the learned counsel for the petitioners, submitted that the learned District Judge proceeded on an incorrect premise that the Deed of Adoption was required to be registered. The learned Judge did not examine as to whether the requirement of valid adoption under Hindu Adoptions and Maintenance Act, 1956, were complied with. By an almost unseasoned order, the learned District Judge rejected the application despite overwhelming material to show that Master S was given and taken in adoption and the consent of the biological parents for the declaration of valid adoption.

6. From the perusal of the impugned order, it appears that the fact that the Deed of Adoption was not registered primarily weighed

with learned Judge as it was in terms recorded that for want of registration the MOU for adoption cannot be construed as a valid Adoption Deed.

7. I find substance in the submission of Mr. Kadam that the learned District Judge proceeded on an incorrect premise. A deed of adoption is not required to be compulsorily registered under section 17 of the Registration Act, 1908. It is not one of the documents enumerated in section 17(1) of the Registration Act, 1908. What is required to be registered under sub section (3) of Section 17 of the Act, 1908 is 'the authority to adopt a son', executed after the first day of January 1872 and not conferred by a will. Thus, a deed of adoption, as distinguished from an authority to adopt, is not required to be compulsorily registered.

8. In the case of **Param Pal Singh vs. National Insurance Company and Anr.**¹ the Supreme Court has considered the requirement of a registration of an Adoption Deed. After adverting to the principles of Hindu Law and the statutory provisions contained in the Hindu Adoptions and Maintenance Act, 1956 and the Registration Act, 1908, the Supreme Court enumerated that section 17 of the Registration Act, 1908 specifically refers to the documents of which registration is compulsory. The Deed of Adoption is not one of the documents mentioned in section 17(1) of

¹ (2013) 3 SCC 409.

the Act, as mandatorily required to be registration. Section 17(3) refers to the mandatory requirement of registration of an authorization that may be given for adopting a son executed after 1st January, 1872, if such authorization is not conferred by a Will. Referring to a judgment of this Court in the case of **Vishvanath Ramji Karale vs Rahibai Ramji Karale**², the Supreme Court further observed that an Adoption Deed does not require registration.

9. In view of the aforesaid position in law, the learned District Judge ought not to have rejected the application on the premise that the MOU for adoption, being an unregistered document, could not have been pressed into service as an Adoption Deed. It also appears that the learned District Judge did not examine the legality and validity of the adoption in the light of the provisions contained in sections 6 to 11 of the Hindu Adoptions and Maintenance Act, 1956.

10. Therefore, the matter is required to be remitted back to the learned District Judge for afresh consideration of the application. Hence, the petition deserves to be allowed.

Thus, the following order.

ORDER

1] The petition stands allowed.

2 AIR 1931 Bombay 105.

2] The impugned order dated 1st October, 2024 in Civil Misc. Application No. 92 of 2023 stands quashed and set aside.

3] Civil Misc. Application No. 92 of 2023 stands restored to the file of learned District Judge, Panvel, Raigad.

4] The learned District Judge is requested to hear and decide Civil Misc. Application No. 92 of 2023 afresh after providing an opportunity of hearing to the parties, as expeditiously as possible.

(N. J. JAMADAR, J.)