

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated : 20. 07.2020

**CORAM**

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**O.P.No.103 of 2020**

1.Viveknarendran

2.N.Srividya

... Petitioners

**Prayer:** The petition filed under Section 56 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) read with Regulations 52(4) and 55(2) of the Adoption Regulations praying to appoint the 1st petitioner as father of the person of the minor female child V.Sahanaa whose date of birth is 22.04.2011 consequently the said minor child be entitled to the legal status of biological daughter with all the rights of succession and inheritance and for all purposes allowed by the law.

For Petitioners : Mrs.Jayasudha Suryanarayanan

**ORDER**

The petitioners are the adopted father and the biological / natural mother of the minor V.Sahanaa seeking direction from this Court that the 1st petitioner be appointed as a father of the minor female child, V.Sahanaa and consequently the minor child be entitled to legal status of biological daughter with all the rights of succession and inheritance in respect of the adopted father and to direct the Authorities to re-issue / modify the birth certificate of the minor V.Sahanaa.

2. The petitioners have come to the Court contending that the 2nd petitioner was originally married to one V.Venkatesh and out of this wedlock the minor child has been born to them on 22.04.2011. Thereafter on 15.05.2017, the biological / natural father of the minor died on account of a heart attack. The mother of the minor has been taking care of her all by herself since then.

3. On 02.12.2018, the 2nd petitioner had married the 1st petitioner and is leading a happy life. The minor child is also a part of this family and she has recognized and accepted the 1st petitioner as her father. The 1st petitioner has therefore come forward to adopt the minor child and the 2nd petitioner, the mother of the minor is also desirous that the 1st petitioner is legally recognised as the father of the minor child. The petitioners have also clarified that there is no guardian to person and property of the minor appointed by the Court and therefore there is no impediment for the 1st petitioner adopting the minor.

4. The petitioners have also stated that the conditions prescribed under the Adoption Regulations and the Juvenile Justice Act have fully been complied with while filing this petition. The petitioners would contend that the adoption is in the paramount interest of the minor Sahanaa. They have also stated that the 2nd petitioner is none else than the biological / natural mother of the minor who is also living with the 1st petitioner and the minor as one happy family. Therefore the petition has come to be filed.

5. The learned counsel for the petitioners, Mrs.Jayasudha Sooryanarayanan, would apart from reiterating the contentions put forward in the petition also state that the 1st petitioner has adduced evidence as P.W.1 and he has produced evidence to show that he is educated and possessed of the necessary wherewithal to take care of the minor female child as his own and he has also produced his original consent expressing his willingness to adopt the minor child from his wife. The following documents have been marked during evidence of P.W.1:

<i>Sl.No</i>		<i>Description of Documents</i>
1	Ex.P.1	The photocopy of the Higher Secondary Course Certificate dated 18.05.2005 in respect of the 1st petitioner.
2	Ex.P.2	The computer generated birth certificate of the minor V.Sahanaa, who was born on 22.04.2011.
3	Ex.P.3	The computer generated death certificate of V.Venkatesh, who died on 15.05.2017.
4	Ex.P.4	The photocopy of the true extract of Hindu Marriage Register for the marriage in Serial No.HMR/MYLAPORE/416/2019.
5	Ex.P.5	The photocopy of the PAN card of the 1st petitioner Vivek Narendran bearing No.AHFPV5183P.

<i>Sl.No</i>		<i>Description of Documents</i>
6	Ex.P.6	The declaration of willingness given by the 1st petitioner Vivek Narendran
7	Ex.P.7	The consent affidavit given by the 2nd petitioner N.Srividya.
8	Ex.P.8	The Computer generated pay slip for the month of October 2019 in respect of the 1st petitioner Vivek Narendran.
9	Ex.P.9	The photocopy of the passport bearing No.K2222827 in respect of the 1st petitioner Vivek Narendran
10	Ex.P.10	The photograph of the minor Child V.Sahanaa along with Compact Disc.
11	Ex.P.11	The original consent form along with covering letter.

6. The 2nd petitioner has also adduced evidence as P.W.2 stating that she has agreed to give her minor daughter in adoption to the 1st petitioner. The learned counsel during her arguments had also submitted that necessary directions be issued to the Authorities under the registration of births and deaths for correcting the birth certificate of the minor child, by entering the name of the 1st petitioner as the father of the minor child by deleting the name of V.Venkatesh who has been registered as the father in the original birth certificate of the minor child.

7. Heard the learned counsel and perused the papers.

8. It is an admitted fact and proved by documents, namely, Ex.P.3 that the biological / natural father of the minor Sahaana, one V.Venkatesh had died on 15.05.2017. Therefore, it is amply evident that it is only the 2nd petitioner who is the surviving parent of the minor. The parties to the proceedings are all Hindus and therefore bound by the provisions of the Hindu Adoption and Maintenance Act, 1956. Section 9 of the above Act describes the persons who are capable of giving in adoption. Sections 9 (1) & (2) would clearly imply that during the life time of one of the spouse the other cannot give in adoption except 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 an unsound mind.

9. In the instant case the biological / natural father died 3 years ago and therefore the proviso to Section 9 (2) of the Act would not be applicable in the instant case. It is therefore well open to the 2nd

petitioner, the biological / natural mother to give her minor child in adoption to the 1st petitioner. Further, the 1st and 2nd petitioner are now husband and wife and the records would indicate that the minor is living along with the petitioners and she appears to be well taken care of. Therefore, there is no impediment to grant the first relief sought for in the petition.

10. As regards the second relief as prayed for by the learned counsel for the petitioners, it cannot be granted for the simple reason that the said late V.Venkatesh was the biological / natural father of minor Sahanaa and on the date on which the birth certificate was issued by the Authorities the said Venkatesh was very much alive and it is he who has been described as the father of the minor child in the birth certificate issued by the Authorities. The adoption does not sever the relationship of the minor with her biological father. The only exception being when the biological father himself renounces his right as father of the minor and consents for the child to be taken in adoption by the adoptive father. Even in such cases, it is my view that the status of being the biological father does not

change. It is only the status of an adoptive father, custody and maintenance of the minor that changes hands.

11. As already stated, in the instant case the question of obtaining the consent of the biological / natural father does not arise as he is no more. It is not in dispute that the 2nd petitioner as the biological / natural mother of the minor is empowered to give the child in adoption but she cannot deprive the child's right to have the name of her biological / natural father in her birth certificate.

12. The registration of the births is governed by the provisions of the Registration of Births and Deaths Act, 1969. Sections 8, 9 and 10 mandates that the information of the births and deaths be given to the Authorities by the persons listed in Section 8 to 10 of the Act. The Act also makes provision for a delayed registration and the procedure is encapsulated in Section 13 of the Act. Section 15 talks about the circumstances under which an entry in the register of births and deaths can be corrected or cancelled. This Section would provide that a correction or



cancellation of the entry in the register of births and deaths could be made in the following circumstances:

- (a) When the entry is erroneous in form or substance; and
- (b) The entry has been fraudulently or improperly made.

On the occurrence of the above, the application could be made to the Authorities seeking correction or cancellation by giving the reasons. The said Section further provides that there shall be no alteration to the original entry and the correction can only be made in the margin with the Authorities signing the same. Therefore, from a reading of Section 15 it is clear that the original entry cannot be corrected / deleted and the incorporation of the new details can be made only in the margin.

13. The State of Tamil Nadu in pursuance of the powers vested under Section 30 of the Registration of Births and Deaths Act, 1969 has notified the Tamil Nadu Registration of Births and Deaths Amended Rules called the Tamil Nadu Registration of Births and Deaths Rules, 2000. This amendment is pursuant to the circular of the Central Government dated 12.03.2012. The Central Government in its circular dated

12.03.2012 of the Ministry of Home Affairs has provided as follows in

Clause 4:

*"4. Form 1-A shall form part of the respective State Rules and the necessary permission of the Central Government to amend Rule 5 (1) is hereby granted under Section 30(1) of the RBD Act, 1969. The existing Rule 5(1) under Section 8 shall be replaced with the following:*

*5(1). Form, etc. for giving information of births and deaths --(1) The information required to be given to the Registrar under Section 8 or Section 9, as the case may be, shall be in form Nos.1, 1-A, 2 and 3 for the Registration of a birth, birth of an adopted child, death and still birth respectively, hereinafter to be collectively called the reporting forms. Information if given orally shall be entered by the Registrar in the appropriate reporting forms and the signature/thumb impression of the informant obtained."*

14. It is in keeping with this circular that the State of Tamil Nadu had incorporated the amendment to its rules. Rule 5 therein has been amended to incorporate adoption. Rule 5 would read as follows:

*"5. Form for giving Information of births and deaths:*

*(1) The information required to be given to the Registrar under section 8 or section 9, as the case may be, shall be in 2 [Forms Nos.1, [1A]3 ,2 and 3] 2 for the Registration of a birth, adoption of child, death and still birth respectively, herein after to be collectively called the reporting forms. Information, if given orally shall be entered by the Registrar in the appropriate reporting form and the signature or thumb impression of the informant obtained. (2) The part of the reporting form containing legal information shall be called as "Legal Part" and the part containing statistical information shall be called as "Statistical Part". (3) The information referred to in sub-rule (1) shall be given within twenty one days from the date of birth, death or still birth."*

It is under this amendment rules the Adoption has been incorporated

for the 1st time for registering births.

15. Therefore, in the case of adoption the form which is prescribed is Form 1-A. Serial Nos.4 and 5 in the said form relates to the name of the mother and father respectively. Serial Nos.7 and 8 relates to the name of the adoptive mother and the adoptive father. Therefore, the request by the petitioners to delete the name of the biological / natural father from the original birth certificate is legally not sustainable particularly when the rules clearly provides for incorporating the name of the adoptive parents separately in Column Nos. 7 and 8 as adoptive parents and not as the natural parents.

16. This Court in a Judgement reported in *AIR 2013 Mad 61 - P.V.Balaji Vs. Registrar of Birth and Death, Pondicherry*, had an occasion to consider a request to change the entry regarding the name of the father of the minor in the birth certificate by deleting the name contained therein and substituting the same with the name of the petitioner. The learned Judge after extracting the provisions of Article 7,

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8, 16 and 36 of the United Nations' Convention on Rights of Child, 1959 which has been endorsed by the Republic of India on 11.12.1992 held that the universally applied doctrine which has been adopted by India has to be applied and the rights of the child to preserve his / her identity and name has to be protected by law by removing unlawful interference.

17. The learned Judge also referred to Section 15 of the Registration of Births and Deaths Act, 1969 and held that the correction of entry of birth or death can be made if it is erroneous in form or substance or has been fraudulently or improperly made. Since in that case such circumstances did not arise the learned Judge had dismissed the Writ Petition filed by the petitioner.

18. In the Judgement reported in *2001 (4) GLR 3326 - Bhavi Gaurang Vaishnav Vs. Govt. of Gujarat*, the Gujarat High Court was considering the case of adoption of a female child who was born to a widow who had handed over custody of the child to a home. She was later on adopted and the adoptive parents re-named her and sought to have the

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birth certificate updated by changing the name given in the birth certificate and by including the names of the adoptive parents as parents in birth certificate. The learned Judge who allowed the petition, however, held that the names of the adoptive parents have to be mentioned only in Column Nos.7 and 8 under the heading adoptive parents.

19. The learned counsel for the petitioner has relied upon the Judgements relating to instances where petition have been filed to have the name of the adoptive parents included in the Passport. There has been Judicial consensus in ordering such applications as it is only a record to show the status of the minor child as on that date. In the Judgement of this Court in *Writ Petition No.29105 of 2014 - Mrs.B.S.Deepa vs The Regional Passport Officer*, the learned Judge has observed as follows:

*"24. Unfortunately, in their anxiety to provide immediate relief and succor to the separated mothers and their minor children, Courts appear to have forgotten the larger issues arising in these cases. Some of the issues that may pose difficulty of being resolved are as follows:-*

*(1) The names of the biological parents, as entered in the Hospital Records and in the Birth Register Extracts can never be changed, as they reflect true statements of fact. Therefore, even if a direction is issued to the Regional Passport Officer to change the name of the biological father in a given case, it will still be in conflict with the entry found in the Register of Births. I do not know how this problem could be solved.*

*(2) Assuming, (God forbids) that there is yet another marriage, as it happens without much ado in Western Societies, is it possible to change the name of the parents every time there is a divorce followed by a fresh marriage.*

*(3) What would happen in cases where biological father leaves a large estate and dies intestate? Will it be possible for the child to establish its identity and claim the right of inheritance. After changing the name of the biological father in all the records, it may not be possible for the child to inherit the estate of its biological father. In such cases, the child may not even be able to establish its identity.*

*25. When society evolves and relationships constantly get redefined, legal issues become more and more complex. Therefore, before jumping into a solution, Courts have a duty to think of the problems that the solutions themselves may throw up. Unfortunately, law on this issue has not evolved in India and hence, we have to look up only to International Conventions and the manner in which the Courts in other countries deal with such situations."*

20. The learned Judge had clearly held that the fundamental premise, on which, the Hindu Law of Adoptions proceeds is that the relationship between the biological parents and the children can never get severed, except in accordance with the provisions of this Act.

21. In the instant case, the biological father is no more and therefore it cannot be said that he severed his ties with his daughter, minor Sahanaa. The biological / natural mother, namely, the 2nd petitioner has given her consent for the 1st petitioner stepping into the shoes of the father by filing



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this petition. However, this Court cannot permit the substitution of the name of the 1st petitioner as the biological / natural father of the minor Sahanaa. Taking into consideration the amendment that has been brought about to the Tamil Nadu Registration of Births and Deaths Rules, 2000, this Court directs the Authorities to issue the petitioners with a birth certificate as contained in Form 1-A of the Rules by effecting entries in column Nos.6, 7, 8, 9 and 10. In all other respects the original birth certificate issued to the minor Sahanaa at the time of her birth shall remain unaltered.

22. In fine, the Original Petition is allowed part. In so far as prayer (a) is concerned the relief is ordered as prayed for and with reference to prayer (b) the same is allowed subject to the above directions. No costs.

**20.07.2020**

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**P.T. ASHA. J,**

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