

834

Madras Weekly Notes (Civil)

2010 (3) MWN (Civil)

1248 of 1996 and against one M.S.M. Nizam, steps have been taken to evict him. In these circumstances, having regard to the finding that the requirement of the Landlord is *bona fide* and the Landlord has got means to put up a new construction, this Civil Revision Petition is also liable to be allowed. But, at the same time, having regard to the presence of other two persons, who were not vacated *viz.*, the tenant in R.C.O.P. No.772 of 1982 and one M.S.M. Nizam, I am inclined to pass the following order:

The order of the Courts below that the Eviction Petition filed by the Landlord under Section 14(1)(b) of the Act is not *bona fide* and the Landlord is not having the means to put up a new construction and the Petition is also barred by *res-judicata* under Section 19 of the Act are set aside and this Civil Revision Petition is allowed, but at the same time, the Landlord cannot execute the order of eviction, till he gets possession of the premises, which is the subject matter of R.C.O.P. No.772 of 1982 and also the premises in the occupation of M.S.M. Nizam, who is the tenant in Door No.25-C. Subject to the above, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

BV

2010 (3) MWN (Civil) 834

IN THE HIGH COURT OF MADRAS

V. Periya Karuppiah, J.

C.R.P.NPD. Nos.3627 and 3785 of 2010 and M.P. Nos.1 + 1 of 2010

3.11.2010

1. Muthuramalingam 2. Revathi [Petitioners in C.R.P.NPD. No.3627 of 2010] **3. S. Sivakumar 4. K. Latha** [Petitioners in C.R.P.NPD. No.3785 of 2010] **.....Petitioner**

Vs.

The General Secretary, Indian Council for Child Welfare, Tamil Nadu
.....Respondent

HINDU ADOPTION AND MAINTENANCE ACT, 1956 (78 of 1956)
— Adoption — District Court permitted adoption of children — While permitting adoption of children, Court imposed condition that child should be produced before Court once in six months — Contention of Petitioner that condition imposed by Court below is onerous and violative of order made in N & S0 LS “) “ILbB““““5dated 12.8.2008 — Adoptive parents are to undergo certain test under law for proving requirements and necessity for having a child of their own — Court should not consider parents as litigants, who bring their disputes for adjudication before Court —

Part 8 Muthuramalingam v. The General Secretary, Indian Council for Child Welfare 835
(V. Periya Karuppiah, J.)

Imposition of condition to produce child once in six months would certainly remind child its past or make child to investigate and to find reasons for appearing before Court — Condition imposed by Court below, *Htu5* onerous — Direction issued to District Court to scrupulously follow guidelines provided in judgment. *Rrsr Jf 6L43M*

**N. Balachandar, Advocate for Petitioner.
No appearance for Respondent.**

REVISION ORDERED WITH OBSERVATIONS — NO COSTS — M.Ps. CLOSED — REGISTRY DIRECTED TO CIRCULATE ORDER TO ALL PRINCIPAL DISTRICT JUDGES DEALING WITH ADOPTION O.Ps.

Prayer in C.R.P.NPD. No.3627 of 2010 : This Civil Revision Petition has been filed by the Petitioner under Article 227 of Constitution of India against the Petition and order passed by the Principal District Judge of Erode, in returning the above un numbered I.A. of 2010 in H.A.M.O.P. No.22 of 2007.

C.R.P.NPD. No.3785 of 2010 : This Civil Revision Petition has been filed by the Petitioner under Article 227 of Constitution of India against the Petition and order passed by the Principal District Judge of Erode, in returning the above un numbered I.A. of 2010 in H.A.M.O.P. No.42 of 2007

JUDGMENT

1. Both Revisions have arisen upon the return of the Applications filed by the Petitioners before the lower Court to relax the condition imposed in H.A.M.O.P. No.22 of 2007 and H.A.M.O.P. No.42 of 2007, directing the production of the adopted wards once in six months.

2. Heard Mr. N. Balachandar, learned Counsel appearing for the Petitioners in both the Revisions. No appearance is made on behalf of the Respondent, despite the name of the Respondent has been printed in the cause list. I have also perused the records produced in the form of typed-sets.

3. The learned Counsel for the Petitioner would submit in his argument that the grievance of the Petitioners in both the Revisions are common, as the lower Court, had imposed onerous conditions to be complied with while passing an order of permitting the adoption of the children respectively. He would further submit in his arguments that the lower Court, while passing an order of granting permission, had passed an order that the 1st Petitioner in the O.P., shall submit a study report regarding the condition of the child, once in six months and the Petitioners 2 and 3 in the O.P., to file progressive report along with the Medical Certificate regarding the welfare of the child, once in three months and the child shall be produced before the lower Court, once in six months. He would further submit that the last condition namely to produce the child once in six months before the lower Court is an onerous condition and therefore, they have filed Applications to relax the said condition before the lower Court, as per the judgment of this Court made in W.P. No.3080 of 2008 dated 12.8.2008. But the said Applications were not taken on file and they were returned. He would further submit that the direction of this Court passed in the aforesaid judgment in a Writ Petition had specifically directed that the adopted child could have been produced before the lower Court once and it would be sufficient. The said direction

has to be followed by the lower Court by ordering the relaxation Petition. He would further submit in his argument that the order passed by the lower Court stipulating the condition to produce the child once in six months before the Court would become otiose. As a Revisional Court, this Court may exercise its power to set aside the order passed by the lower Court and issue directions accordingly, to the lower Court. He would further submit that therefore, the return order passed by the lower Court as well as the order of imposing onerous condition may be interfered by this Court and both the revisions may be allowed accordingly.

5. I have given anxious thoughts to the arguments advanced by the learned Counsel for the Petitioner in both the Revisions. I have also carefully perused the records. Indisputably, the Petitioners in both the Revisions are the adoptive parents, who adopted the respective children in the process of adoption as per the Hindu Adoption and Maintenance Act. The lower Court in their respective Petitions had permitted the Petitioners to take the children in adoption from the 1st Petitioner of the adoption O.P., filed before the lower Court. The lower Court had issued certain conditions, while allowing the said Application, namely to file a study report regarding the conditions of the child, by the 1st Petitioner, once in six months and the Petitioners 2 and 3 (Petitioners herein) to submit a progress report along with the Medical Certificate regarding the health and welfare of the child, once in three months and the child shall be produced by the adoptive parents (Petitioners herein), once in six months before the Court. The Petitioners did not question the earlier two conditions but they questioned the last condition namely, the production of the child before the lower Court, once in six months as contrary to the judgment of this Court made in W.P. No.3080 of 2008 dated 12.8.2008.

6. On a careful perusal of the orders passed by the lower Court, it has allowed the main O.P., as prayed for by the Petitioners and has imposed the conditions as discussed above. However, there was no discussion regarding the necessity to impose those conditions in the order passed by the lower Court. However, the Petitioners have applied for relaxation of the 3rd condition only, (*i.e.*) production of the child once in six months before the lower Court, by way of filing applications which were not entertained. This could be evidenced through the production of the said returned Applications. While returning the said Applications, the lower Court has not considered the judgment passed by this Court in W.P. No.3080 of 2008 dated 12.8.2008, issuing guidelines to be followed by the District Judges, who are dealing with the adoption cases. No doubt it is true that the judgment passed by this Court was not germane on the date of passing orders in the main O.P., in August 2007. But it has been brought to the notice of the lower Court in the Application to relax such condition to produce the child once in 6 months before Court. But, the lower Court, did not act on it but it had returned the papers.

7. The order passed by this Court in W.P. No.3080 of 2008 dated 12.8.2008 has given clear indications and directions for the disposal of

Part 8 Muthuramalingam v. The General Secretary, Indian Council for Child Welfare 837
(V. Periya Karupiah, J.)

adoption O.Ps., filed before the District Judges concerned. The relevant passage would run thus:

“17. Taking note of these developments, the following directions are issued to all the District Courts, which are dealing with original Petition either under HAMA or GAWA:

- (i) A direction in an Application filed for adoption in the District Court should not take more than four months.
- (ii) The Court should not hear the matters in the Open Court but preferably in the chambers of the learned Judges or with special timings in the Open Court itself.
- (iii) There should not be any frequent request to produce before the Court the Child to be given in adoption and the order for producing the child should be made only once.
- (iv) The adoptive parents must be treated with respect and due courtesies must be shown to them. It must be understood that they are not litigants in any adversarial proceedings before the Court.
- (v) In the operative portion of the order passed by the District Court, it must necessarily indicate the Date of Birth of the adopted child and it must direct all authorities concerned to accept the said date of birth for all practical purposes.”

8. It was also directed by this Court to circulate the aforesaid order to all the District Judges for being followed. However, said direction given by this Court in the said judgment has not been considered by the lower Court and the Applications filed by the Petitioners before the lower Court for relaxing the conditions were not taken on file, to order so.

9. The intention of the legislation for giving and taking adoption of the children, whose parents are not alive or discarded by the parents and the other children, who are not having any support are being taken care of by Non-Governmental Organizations, after obtaining proper recognition from the Government are doing yeoman service and the Court are also part of the said process to validate the said adoptions for the settlement of such children, who were helpless from their parents or who had no parents. If the children are given in adoption at their tender age they can forget the past and will live peacefully with their adoptive parents, as their own parents. The adoptive parents who are to undergo certain tests under law for proving the requirements and necessity for having a child of their own, have come to Court and on satisfaction, the Court would be passing orders permitting them to have the adoption. In such circumstances, the Court should not consider them as litigants, who bring their disputes for adjudication before Court. They are coming to Court for complying with certain procedures. The usual directions given to the parents to comply with the filing of reports regarding the children would be sufficient to have a constant vigil over the post adoption. The production of the child, once in six months would certainly make the relationship of the adoptive parents and the child still with gap instead of getting them closer. Therefore, in order to strengthen fond of love

and affection in between the adoptive parents and adoptive child and to develop natural love and affection as parents and children, the reminding factors should have been as far as possible be reduced. The imposing of condition to produce child once in six months would certainly remind the child its past or make the child to investigate and to find the reasons for appearing before the Court. Therefore, the said condition as directed by the lower Court to produce the child once in six months is certainly against the tenor of the adoption. This Court had considered such circumstances and had given directions in its order in W.P. No.3080 of 2008 dated 12.8.2008. Therefore, the lower Court ought to have taken the Applications on file to relax the condition and should have passed an order of relaxation or deletion of the condition to produce the child once in six months. But the lower Court failed to do so. The said order of return passed by the lower Court is certainly against the intention of the legislation as well as the order of this Court made for the benefit of the adopted children.

10. It was represented by the learned Counsel for the Petitioner that he has already produced the child three times as per the directions of the lower Court and the next turn of six months is fastly approaching and therefore, this Court can straight away remove or relax the condition to produce the child once in six months instead of directing the Court to take the Application on file and to pass orders in terms of the orders passed by this Court in W.P. No.3080 of 2008 dated 12.8.2008. The submission of the learned Counsel is certainly acceptable in view of the welfare of the adopted children. Therefore, this Court exercise its power under Article 227 of Constitution of India and thereby order relaxing the condition imposed for the production of the adopted child once in six months passed by the lower Court as not required.

11. The lower Court is also directed to make proper endorsements in the said order by removing the said condition in the operative portion of its order and not to insist the Petitioner to produce the adopted children herein after, since they have already been produced the children more than once before the lower Court.

12. It does not end with this case and thereafter, the lower Court is directed to follow the aforesaid directions in all the adoption O.Ps, which are likely to be dealt with by the lower Court, in future. The lower Court is also further directed to meticulously follow the guidelines given by this Court in W.P. No.3080 of 2008 dated 12.8.2008 as stated supra while disposing the adoption O.Ps. The legislation regarding adoption and the proceedings before the Court are beneficial to the society and since destitute children are placed in the benign hands of the adoptive parents. Therefore, it has become necessary to remind the lower Court as well as the District Judges of Tamil Nadu and Puducherry, who are dealing with the adoption O.Ps., to scrupulously follow the guidelines given in W.P. No.3080 of 2008 dated 12.8.2008 and this order.

Part 8

G. Pavunambal v. Sharmila Devi
(A. Selvam, J.)

839

13. With the aforesaid observations, the revision is ordered. The lower Court is directed to number the said application and to tag this order in the said applications and also to make endorsements in the order passed by the lower Court in the main O.P., as aforesaid. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

14. The Registry is directed to circulate this order to all the Principal District Judges, who are dealing with adoption O.Ps. in the States of Tamil Nadu and Puducherry.

BV

2010 (3) MWN (Civil) 839

IN THE HIGH COURT OF MADRAS

Rl r ui sr Be nc hHM

A. Selvam, J.

S.A. (MD). No.747 of 2010

24.11.2010

1. G. Pavunambal 2. G. Ramamoorthy 3. G. Ashok Kumar 4. G. Nagarajan
.....*Appellants*

Vs.

1. Sharmila Devi 2. Dhanalakshmi*Respondents*

(A) INDIAN SUCCESSION ACT, 1925 (39 of 1925), Sections 112 & 109 — Plaintiffs claimed rights into and upon suit property as legal heirs of "2j — "mj father of "2j had executed Will bequeathing life interest to "2j in Suit property — "2j predeceased Testator "mj — Facts would attract Section 112 — Conditions mentioned in Section 109 are absent in facts of case and Will is void. *Rr sr H) 54f 5B "B B4M*

(B) EVIDENCE ACT, 1872 (1 of 1872) — Revenue Records — Mutation in Revenue Records — Mutation in Revenue Records will not confer any title over property. *Rr sr B- B B, M*

CASES REFERRED

Bant Singh v. Niranjan Singh (dead) by L.Rs., 2008 (4) SCC 75 23
Uma Devi Nambiar v. T.C. Sindhan (Dead), 2004 (2) CTC 287 25

V. Chandrasekar, Advocate for Appellant.
Veera Kathiravan, Advocate for Respondent.

S.A. ALLOWED — NO COSTS

Prayer: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 26.03.2010 made in A.S. No.29 of 2009 on the file of the learned Principal Subordinate Judge,