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(2017) AIR(Punjab) 1 : (2016) 4 LawHerald 3470 : (2017) 1 RCRCivil 1003

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 5862 of 2016

Mohit APPELLANT

Vs

Union of India RESPONDENT

Date of Decision: Nov. 16, 2016

Acts Referred:
Constitution of India, 1950 - Article 226

Citation: (2017) AIR(Punjab) 1 : (2016) 4 LawHerald 3470 : (2017) 1 RCRCivil 1003

Hon'ble Judges: Mr. Rakesh Kumar Jain, J.

Bench: Single Bench

Advocate: Mr. Varun Issar, Mr. P.P. Chahar, DAG, Haryana, for the Respondent Nos. 1 and 2; Mr. Sajjan Singh Malik, Advocate, for the Petitioner

Final Decision: Disposed Off

Judgement

Rakesh Kumar Jain, J. - The petitioner was born on 18.08.1990. The biological parents of the petitioner are S.M. Arora and Nirmal Arora.

His sister Gurpreet was born on 10.01.1988. The marriage of his natural parents was dissolved by a decree of divorce in the year 1996 in HMA

No.843/92 by the Court of Additional District Judge, Delhi and custody of both the children were handed over to their mother Nirmal Arora, who

re-married Ujjal Singh on 13.02.1997 and got their marriage registered with the Registrar of Marriages, Panipat. At the time of re-marriage of his

mother, the petitioner was about 7 years of age and his elder sister was about 9 years of age, who have been brought up by their mother and step-

father Ujjal Singh, whose name is recorded as father of the petitioner in the Ration Card, Adhar Card, PAN card, Voter Identity card, School

Certificate and even in the Passport No. F3149729 of her sister Gurpreet. The petitioner also applied for passport with the father''s name of his

step-father but he has been informed that it can be issued in the name of his biological father in view of Para 4.4 of Chapter 8 of the Passport

Manual Act, 2010 (hereinafter referred to as the ""Act""). The petitioner has, thus, filed this petition seeking a mandamus declaring the action of the

respondents as illegal in not issuing him passport in the name of his step-father Ujjal Singh.

2. Counsel for the petitioner has submitted that the petitioner is the son of Ujjal Singh, which is recorded in various other Government records and

if the name of his biological father is mentioned in the passport, as being insisted upon by the passport authority, then it would create a lot of

confusion especially when his real elder sister is already holding the passport bearing the name of his step-father Ujjal Singh and not the biological

father S.M. Arora. It is also submitted that at the time of divorce, the biological father handed over his custody to his mother and snapped all his

relations with the petitioner about his maintenance, education and other necessities of life including visitation rights. It is further submitted that for all

intents and purposes, the step-father of the petitioner is his legal guardian though he has not been so appointed by the Court because it was never

found necessary, therefore, Para 4.4 of Chapter 8 of the Act, relied upon by the respondents may be read down in favour of the petitioner

considering Ujjal Singh, his step-father, as his legal guardian in the given facts and circumstances. In support of his submission, he has relied upon a

decision of the Delhi High Court in the case of Shalu Nigam & Anr. v. The Regional Passport Officer & Anr., W.P. (C) No. 155/2016, decided

on 17.05.2016 and a judgment of this Court in the case of Prerna Katia v. Regional Passport Office Chandigarh and another, CWP No.

26805 of 2015, decided on 05.08.2016.

3. On the other hand, learned counsel for the respondents has only relied upon the provisions of Para 4.4 of Chapter 8 of the Act and contended

that the respondents had no objection if the petitioner obtains an order from the Court appointing his step-father Ujjal Singh as his legal guardian.

4. I have heard learned counsel for the parties and examined the available record with their able assistance.

5. There is no dispute that the petitioner is the natural born son of S.M. Arora and Nirmal Arora and has an elder sister Gurpreet. The marriage of

his parents was dissolved by the decree of divorce in 1996 and he was given in custody to his mother. The mother re-married on 13.02.1997 with

Ujjal Singh when the petitioner and his elder sister were both of tender age. They have been looked after by their step-father Ujjal Singh, who has

been recorded as his father in various Government records like Ration Card, Adhar Card, PAN card and School Certificates etc. Elder sister of

the petitioner has already got a passport in which Ujjal Singh has been mentioned as her father. The only difficulty being faced by the petitioner is

because of Para 4.4 of Chapter 8 of the Act, which provides as under:-

4.4) In the event of re-marriage after divorce, the name of stepfather/step-mother cannot be written in the passport of children from the previous

marriage. The relationship of the child to his biological parents subsists, even after divorce by parents. It is also not possible to leave the column of

father or mother blank in the passport in such cases. Therefore, such applicants must write the names of their biological parents in the application

form. However, if the step-father or step-mother is appointed by a Court as legal guardian, the name of such a step-parent can be written as legal

guardian.

6. According to the aforesaid provision, the name of the stepfather cannot be mentioned in the passport even on re-marriage after divorce because

relationship of the child to his biological parents subsists, even after divorce by parents. However, name of the step-father can be mentioned after

he is appointed by the Court as a legal guardian.

7. Thus, the question would arise as to whether in the given facts and circumstances where the step-father is acting as a legal guardian of the

petitioner since when he was about 7 years of age, it requires a declaration by the Court for the purpose of recording his name as his father/legal

guardian in the passport?

8. In Shalu Nigam"s case (supra), the prayer was made by the petitioner for re-issuance of her daughter"s passport without insisting upon her

father"s name being mentioned in the application on the ground that she has raised her daughter as a single parent since her birth as the biological

father has completely abdicated his responsibilities.

9. In Prerna Katia"s case (supra), prayer was made to use sir-name of the petitioner with the name of her daughter in the passport instead of sir-

name of her divorced husband.

10. Both the writ petitions were allowed by the Courts though in Prerna Katia"s case (supra), the respondents had relied upon Para 4.5 of

Chapter 8 of the Act, in which it is provided that the request for deletion of parent name from passport due to parents" divorce should not be

accepted because the divorce decree does not result in severance of the relation between the child and the parent, unless the parent has legally

disowned the child. In the said case, the view taken by this Court was that since the child was in custody of the wife at the time of divorce and the

husband did not even ask for visitation rights and gave the entire alimony/maintenance to the mother of the child, the petitioner therein was held

entitled to get her sirname corrected in the passport by deleting the sir-name of her biological father.

11. Similarly, in this case, the petitioner has been looked after by his step-father when he was only 7 years of age and has been consistently

recorded in various Government records as the son of his step-father and not the son of his biological father and his elder sister is having the

passport with the name of his step-father, therefore, the step-father of the petitioner is his legal guardian for all intents and purposes for which there

is no need to obtain an order from the Court for his appointment as legal guardian until and unless the capacity of the step-father, acting as a legal

guardian, is challenged by the biological father especially in a case where the custody is handed over by the Court to the mother.

12. Thus, in view of the aforesaid facts and circumstances, the objection of the passport authority is overruled and direction is issued to issue

passport to the petitioner mentioning his father''s name as Ujjal Singh.

The needful shall be done expeditiously, preferably within a period of one month from the date of receipt of certified copy of this order.