

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 1516 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DEVAN M. DESAI

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| ===== | | |
| Approved for Reporting | Yes | No |
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PATEL SURESHBHAI BABULAL & ANR.

Versus

PATEL PRAVINBHAI BABUBHAI & ORS.

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Appearance:

MR DEVDIP BRAHMBHATT(3490) for the Petitioner(s) No. 1,2

MS.NIDHI P BAROT(6675) for the Respondent(s) No. 1,2

RULE SERVED for the Respondent(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 02/07/2025

ORAL JUDGMENT

1. The present petition is filed under Articles 226 and 227 of the Constitution of India seeking the following reliefs.

“A. To pass an appropriate writ, order or direction directing the learned Additional District Judge, Mehsana to declare the adoption of Ankit by the present petitioners on 08.01.1991 as legally valid and correct by quashing and setting aside the impugned order dated 24.11.2017 passed in Civil Misc. Application No.238 /2016 by the learned Additional District Judge, Mehsana.

B. To pass an appropriate order declaring the present petitioners as the adopted parents of Ankit.

C. To pass an appropriate order declaring the registered adoption deed dated 18.02.2016 as valid and legal.

D. xxx...”

2. Heard learned advocate Mr. Devdip Brahmbhatt for the petitioners. None present for respondent Nos.1 and 2. Though served none appeared for respondent No.3.

3. The brief facts of the case are as under;

3.1 Appellants-original applicants filed an application under Section 16 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'the Act') for declaration of adoption of Ankit on 08.01.1991 legal and valid. The case of the original applicants-appellants was that original-applicant No.1 and original-opponent No.1 are real brothers and original-applicant No.2 and original opponent No.2 are the respective wives of applicant No.1 and opponent No.1. Original-opponent Nos.1 and 2 are the natural parents of the adoptive son Ankit. The date of birth of Ankit is 01.01.1991. Adoption Ceremony was held on 13.01.1991 at village Vadu, Taluka Kadi in presence of well-wishers and relatives of both the sides and Ankit was given in adoption. Original-applicants accepted Ankit as an adoptive son

and original-opponent Nos.1 and 2 gave Ankit in adoption. The document of deed of adoption was executed and registered on 18.02.2016, and thereafter, the adoptive son filed an application under Section 7 of the Guardians and Wards Act, 1980. The application of the adoptive son Ankit Sureshbhai Patel who was about 25 years on the date of application came to be rejected by learned 2nd Additional District Judge, Mahesana. Thereafter, the present appellants filed an application under Section 16 of the Act seeking validation of the adoption dated 08.01.1991 of Ankit as legal and valid. Upon service of notice, opponents-natural parents appeared but did not contest the petition. However, vide Exhibit-24 and 25, original-opponent Nos.1 and 2 admitted the contents of the application and supported the application. On behalf of appellants, power of attorney holder Jigneshbhai Pravinbhai Patel was examined at Exhibit-9. The said witness was not cross-examined. Applicants produced documentary evidence in support of the application. Opponent No.1-natural father filed examination-in-chief at Exhibit-24.

After considering the evidence on record, learned Additional District Judge rejected the application on 24.11.2017.

3.2. Being aggrieved and dissatisfied with the impugned judgment and decree, original applicants herein petitioners have filed the present First Appeal before this Court.

4. Learned advocate for the petitioners has submitted that the original-applicant No.1 and original-opponent No.1 are real brothers and applicant No.2 and opponent No.2 are the respective wives of applicant No.1 and opponent No.1. A son named Ankit was born to opponent Nos.1 and 2 on 08.01.1991. As petitioners had no child at that time, decided to adopt Ankit as their son. The adoption ceremony was held on 13.01.1991 at Village Vadu, Taluka Kadi in presence of friends and relatives of the both the sides. However, the deed of adoption was not executed on that date. After 13.01.1991, Ankit was staying with the present petitioners and in all government records, applicant No.1 is shown as the father of Ankit. In the Passport, Aadhaar

Card, Election Card, Ration Card as well as School Leaving Certificate, applicant No.1 is shown as the father of Ankit. After the adoption in 1991, petitioners were blessed with three other children. It is further contended that the ceremony of adoption was done by one Shastri named Kiran Jayantilal Shastri who has also issued a certificate to the fact that on 13.01.1991, as per the Hindu Rites and Ceremonies, adoption Vidhi was performed. The invitation card which is placed on record at page No.27 of the paper-book has also been relied upon by learned advocate for the petitioners. It is further submitted that after the adoption ceremony was concluded, the ceremony of adoption was celebrated amongst the family of both the sides. It is further contended that on the date of application, the adoptive son Ankit was staying at USA with petitioners and has got a Green Card. As petitioners required a valid adoption certificate from the concerned Court, the application for declaring adoption of Ankit came to be filed. It is further contended that there is no impediment under the various provisions of the Act, whereby

petitioners can be non-suited. It is further contended that the period to reckon a valid adoption is to be considered as 13.01.1991, the date on which the adoption ceremony was conducted as per Hindu rites by a priest. It is further contended that the reasonings adopted by learned trial Court are uncalled for so far as the interpretation of Section 7 and 8 of the Act. Even the reference of Section 8 of the Guardians and Wards Act, 1890 was uncalled for by learned Court below. It is contended that provisions of Sub-section (4) of Section 9 the Act would be applicable in a case where both father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by Court of competent jurisdiction to be of unsound mind or the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the Court in person including guardians. It is further contended in the present case, the natural parents of the child have given the child in adoption to petitioners and therefore, the provisions of Sub-

section (4) of Section 9 are not applicable. So far as the provisions contained in Sub-section (5) of Section 9 are concerned, the same are also not applicable to the present case. It is therefore, contended that none of the aforesaid provisions applied to the facts of the present case and learned Court below ought to have allowed the application by holding that the child Ankit was given in adoption on 13.01.1991. The registration of the document of adoption was merely a formality which was done on 18.02.2016. The date of registration of the adoption deed is not the date to be reckoned for the purpose of determining the date of adoption. Reference is also made to Section 12 of the Act. It is further contended that the said provision contemplates that adopted child shall be deemed to be a child of his or her adoptive father or mother for all purposes with effect from the date of the adoption. The date of adoption in the present case, according to the learned advocate for the petitioners is 13.01.1991 and not the date of 18.02.2016, the day on which, the deed of adoption got executed and registered.

5. I have considered the submissions canvassed by learned advocate for petitioners and also perused the paper-book placed on record. The question involved in the present case is that what is the date to reckon a valid adoption. Some facts in brief are required to be narrated. It appears from the application filed under Section 16 of the Act, and documents placed on record, that son Ankit was born to original-opponent No.1-Pravinbhai Babubhai Patel and original opponent No.2-Manjulaben Pravinbhai Patel on 08.01.1991. Opponent Nos.1 and 2, had already a son named Jignesh born on 18.10.1988 out of the wedlock. Petitioners were not having any children on the date of alleged adoption held on 13.01.1991. It is the case of petitioners that since they have no children decided to adopt Ankit as their son and on 13.01.1991 adoption Vidhi was performed by one priest Kiran Jayantilal Shastri in presence of the the relatives from both the sides. After the ceremony of adoption Vidhi, the family arranged a celebration on the same day by inviting friends and relatives. The invitation card which is placed on

record at page No.27 and the certificate issued by Kiran Jayantilal Shastri placed on record a page No.26 fortifies the above factual aspect. After the adoption Vidhi was concluded, Ankit was staying with petitioners as an adoptive son and the name of Ankit was entered in Ration Card, School records, School Leaving Certificate, Passport, Aadhaar Card, Election Card, as son of applicants. After adoption in 1991, petitioners were blessed with three other children who were born out of the wedlock of petitioners. Petitioners and Ankit were staying at USA and as Ankit very recently got Green Card, petitioners required a legal and valid document i.e. Court's orders validating the adoption of Ankit which held on 13.01.1991. It appears from the record that Ankit had earlier filed a Miscellaneous Civil Application being No.27 of 2016 under Section 7 of the Guardians and Wards Act praying for the validation of the adoption executed on 13.01.1991. However, the said application came to be dismissed by learned 2nd Additional Judge, Mahesana on 01.10.2016. Thereafter, the

present application came to be filed by petitioners seeking validation of adoption done on 13.01.1991. Mark 4/1 is a registered deed of adoption registered on 18.02.2016 before the Sub-Registrar, Kalol. Undisputedly, it has come out on record that on the date of registration of the deed of adoption, Ankit was aged about 25 years of age.

6. At this stage, Clause (iv) of Section 10 of the Act is required to be referred to and the same is reproduced as under;

“10. Persons who may be adopted.—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

(i)

(ii)

(iii)

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.”

7. The said provision mandates as to the person who may be adopted. As per clause (iv) of Section 4, there is a restriction imposed upon by the legislature. No person shall be capable of being taken in adoption unless the conditions mentioned in clause (i) to (iv) are fulfilled. Clause (iv) contemplates that a person who has not completed the age of 15 years is capable of

being taken in adoption. Such restriction of age can be let go unless there is a custom or usage applicable to the parties which permits persons who have completed the age of 15 years being taken in adoption. If the aforesaid provision is interpreted, there is a restriction of age put by the legislature. A person who has completed the age of 15 years cannot be held to be capable of being taken in adoption unless a custom or usage enables the parties to permit persons to adopt who have completed the age of 15 years.

8. It appears from the application and oral deposition of the power of attorney of petitioners, that no case is made out by petitioners that a custom or usage is applicable to the parties which permits adoption of a person beyond the age who has attained the age of 15 years.

9. The contention which has been raised by the learned advocate for the petitioners that the date of adoption is 13.01.1991, the day on which, according to the petitioners,

adoption Vidhi was performed in presence of relatives. To test such contention, when the entire record is perused, petitioners have not examined either the priest who has issued a certificate produced at page No.26. The said certificate does not mention about the date on which the certificate is issued. Even the invitation card which is produced at page No.27, it appears that there is no mention about the names of respective wives of petitioner No.1 and opponent No.1.

10. Section 7 of the Act is reproduced as under:-

“7. Capacity of a male Hindu to take in adoption.—

Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife 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.”

There is also a breach of the proviso to Section 7 of the Act, which envisages that a male Hindu who is of sound mind and is not a minor capacity to take a son or daughter in adoption but he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has

ceased to be a Hindu or has been declared by Court of competent jurisdiction to be of unsound mind. On perusal of the record, the evidence to the effect that whether wife of petitioner No.1 consented before the adoption ceremony or not is missing. More particularly, the petitioners have chosen to remain absent in the proceedings and a power of attorney, who, as per the submission of learned advocate for the appellant, is the elder son of Pravinbhai Babubhai Patel has been examined. Interestingly, the date of birth of the said witness is mentioned as 18.10.1998 in the deed of adoption. Thus, on the date of adoption Vidhi dated 13.01.1991, the said witness was aged about only 3 years. The evidence of such witness cannot be accepted. It cannot be said that the said witness had knowledge about the alleged adoption Vidhi performed on 13.01.1991.

11. For a valid adoption, in absence of a registered document of adoption, any ceremony performed prior to the registration of a deed of adoption is of no value in the eye of law, unless by a clinching evidence, adoptive parents establish a fact that the

child was adopted before the completion of 15 years of age and with the consent of wife. In the present case, as observed earlier, petitioners have not examined either the priest or the relatives of the parties to substantiate the fact that the adoption Vidhi was performed on 13.01.1991 as per the Hindu rituals. Merely by having name of petitioner No.1 after the name of Ankit as a father, it would not make a legal and valid adoption so far as validation of adoption is concerned. The date of adoption is the date of execution of a registered sale deed of adoption dated 18.02.2016, which is an illegal document as on the date of registration of deed Ankit was aged about 25 years.

12. The scope under Article 227 of the Constitution of India is very narrow and this Court can only interfere in the order impugned if the same is *de hors* the provisions of law and there is patent illegality and arbitrariness in arriving at the conclusion. Moreover, considering the facts, exercise of powers under Article 227 of the Constitution of India cannot be invoked since

the learned advocate for the petitioner could not point out any gross error being committed by learned trial Court.

13. In the background of the above facts, I do not find any reason to interfere in the findings arrived at by learned trial Court in rejecting the application. Resultantly, the present petition fails and the same is dismissed. Rule is discharged.

14. Record and proceedings, if any, be sent back to the concerned Court below forthwith.

RINKU MALI

(D. M. DESAI,J)