

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

FRIDAY, THE 5TH DAY OF NOVEMBER 2021 / 14TH KARTHIKA, 1943

CRL.A NO. 971 OF 2019

AGAINST THE ORDER/JUDGMENT DATED 15/03/2019 IN OP(ADOPTION) NO
75/2016 OF DISTRICT COURT & SESSIONS COURT, KOLLAM

APPELLANTS/PETITIONER:

1 THOMAS P.
AGED 57 YEARS
S/O.PHILIP, PULIPPARA THAZHATHIL, NJARAKKADU, THALAVOOR
P.O., PATHANAPURAM THALUK, KOLLAM.

2 MONI THOMAS,
AGED 47 YEARS
W/O.THOMAS P., PULIPPARA THAZHATHIL, NJARAKKADU,
THALAVOOR P.O., PATHANAPURAM THALUK, KOLLAM.

BY ADVS.
SRI.R.RENJITH
SRI.M.T.SURESHKUMAR

RESPONDENTS/STATE AND RESPONDENT:

1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN-682031.

2 JOHNSON,
AGED 47 YEARS
S/O.KURIAKOSE, PARAYAKKUNNEL VEEDU, DHARMAPURI,
VILAKUDI PANCHAYATH, ELAMPAL P.O., PATHANAPURAM TALUK,
KOLLAM, PIN-691322.

3 SHEENA,
AGED 39 YEARS
W/O.JOHNSON, PARAYAKKUNNEL VEEDU, DHARMAPURI, VILAKUDI
PANCHAYATH, ELAMPAL P.O., PATHANAPURAM TALUK, KOLLAM,
PIN-691322.

BY ADV SMT.N.N.GIRIJA
PP SMT SHEEBA THOMAS

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
05.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This CrI.A has been filed against the order in O.P. (Adoption). No. 75/2016 dated 15.03.2016 of District Court, Kollam. According to the learned counsel for the appellant, respondents 2 and 3 are husband and wife. The 2nd respondent is the brother of the 2nd appellant and 3rd respondent is the wife of the 2nd respondent. The respondents 2 and 3 are the biological parents of Kumari, Maria Johnson aged 8 years old, who is the 4th girl child of the said couple. The appellants are childless couple; both of them had undergone treatment for infertility for a long period. Doctors confirmed that it will not be possible for the appellants to become biological parent of a child. The 2nd appellant had to undergo uterus removal surgery. Hence, at present there is no chance for the 2nd appellant getting conceived. Kumari. Maria Johnson is the 4th girl child of the respondents 2 and 3. whileso, the respondents 2 and 3 expressed their willingness to give in adoption of Kumari. Maria Johnson to the appellants. Hence, with a view to legalize the entire proceedings, O.P.(Adoption) No. 75/2016 has been filed by the appellants

before the District Judge, Kollam. By the impugned order, the learned District Judge dismissed their O.P., finding that the court has no jurisdiction to entertain or adjudicate the issue of adoption mooted by the appellants and aggrieved by the same appellants approach this Court.

2. The learned counsel for the appellants drew my attention to various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Juvenile Justice (Care and Protection of Children) Rules, 2014 and Adoption Regulations, 2017.

3. Heard both sides. Section 2(2) of the Juvenile Justice (Care and Protection of Children) , 2015 reads as follows:

“'adoption' means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child.”

4. Section 2(23) of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as follows:

“'Court' means a Civil Court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts.”

5. Section 2(52) of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as follows:

“ 'relative', in relation to a child for the purpose of adoption under this Act, means a paternal uncle or aunt, or a maternal uncle or aunt, or paternal grandparent or maternal grandparent.”

6. According to the learned counsel for the appellants, being the brother's child of the 2nd appellant, the child supposed to be adopted will come within the definition of 'relative' defined under Section 2(52) of the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 56(2) is also relevant which reads as follows:

“Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.”

7. Next the learned counsel drew my attention to Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short the Act) which deals with the appeals and reads thus:

“Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974)”

8. So this is the proper forum for entertaining an appeal against the impugned order. The learned counsel drew my attention to the provisions of the Juvenile Justice (Care and Protection of Children) Rules, 2014 (In short the rules). Rule 40(2) of the Juvenile Justice (Care and Protection of Children) Rules, 2014 reads as follows:

“For all matters relating to adoption, these rules and guidelines issued from time to time by the State Government and notified by the State Government shall apply. In the absence of such rules the guidelines issued by the Central Adoption Resource Agency and notified by the Central Government under sub-section (3) of Section 41 of the Act shall apply.”

9. Rule 41(C) of the Juvenile Justice (Care and Protection of Children) Rules, 2014 deals with the procedure for adoption reads as follows:

“The specialised Adoption Agency along with the prospective adoptive parent(s) shall file a petition in the Court having jurisdiction for obtaining the necessary adoption orders under the Act and these Rules within ten days from the acceptance of referral by prospective adoptive parent(s) and shall take necessary steps to get the process of legal adoption completed at the earliest.”

10. The learned counsel also drew my attention to the Adoption Regulations, 2017. Regulation 4 of Adoption

Regulations, 2017 deals with child eligible for adoption reads as follows:

The following shall be eligible for adoption, namely:-

“(a) any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee;

(b) A child of a relative defined under sub-section (52) of Section 2 of the Act;

(c) child or children of spouse from earlier marriage, surrendered by the biological parent(s) for adoption by the step-parent.”

11. Regulation 5(7) of Adoption Regulations, 2017 reads as follows:

“ The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by step-parent.”

12. The learned counsel further drew my attention to Regulation 55 Adoption Regulations, 2017 reads as follows:

“ Legal procedure:- 1)The prospective adoptive parents, who intend to adopt the child of a relative as defined in sub-section (52) of Section 2 of the Act, shall file an application in the competent Court under sub-section 2 of Section 56 of sub-section (1) of Section 60 of the Act in case of in-country relative adoption or inter-country relative adoption, respectively, alongwith a consent letter of the biological parents as provided in Schedule XIX and all other documents as provided in Schedule VI.

2) The biological parent and the step-parent, who

intend to adopt the child or children of the biological parent, shall file the adoption application as provided in Schedule XXXII, in the Court concerned of the district where they reside, along with consent letter of the biological parents and the step-parent adopting the child or children, as provided in the Schedule XX and all other documents as provided in Schedule VI.

3) *The prospective adoptive parents, in case of inter-country relative adoption, shall file the adoption application in the Court concerned of the district, where the child resides with biological parents or guardians as provided in Schedule XXXI.*

4) *The prospective adoptive parents shall file an application in Family Court or District Court or City Civil Court, as the case may be.*

5) *Before issuing an adoption order, the Court shall satisfy itself of the various conditions stipulated under Section 61 of the Act, and Regulations 51 to 56, as the case may be.*

6) *The prospective adoptive parents shall obtain a certified copy of the adoption order from the Court and furnish a copy of the same to the District Child Protection Unit for online submission to the Authority.”*

13. The learned counsel also drew my attention to Section 27 which is deals with the Child Welfare Committee.

“27(1) The state Government shall by notification in the official gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided

within two months from the date of notification.”

14. The learned counsel further takes my attention to Section 2(14) (iii) of the Act read as follows:

“child in need of care and protection” means a child:-

iii) who resides with a person (whether a graurdian of the child or not) and such person-

a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or....”

15. The child in question belonged to respondents 2 and 3 and will not come under any of the categories described in clause 14.

16. In the present case, petitioners are relatives as provided under Section 2(52) of the Act and the forum for filing the petition for adoption as per Section 2(23) of the Act include, District Court, Family Court and City Civil Court. 1st appellant is aged 57 years old and the 2nd appellant is aged 47 years old. Since the petitioners are relatives, the age bar as prescribed under

the Act will not be applicable under the Regulation 5(7).

17. Appellants have no child inspite of undergoing various procedures, the doctors certified that there is no chance for conceivment by the 2nd appellant and her uterus is also removed and the 2nd respondent is the brother of the 2nd appellant. So they come within the definition of 'relatives' as prescribed under Section 2(52) of the Act. As per law, procedures and the rules above prescribed, the appellants are eligible to adopt a child, who is the 4th girl child of respondents 2 and 3. The respondents have no objection and have filed a consent letter too. In the said circumstance, the finding of the learned District Judge that the court is not a proper forum and they have to approach the Child Welfare Committee is illegal and perverse.

18. Presently the Family Courts are designated as Adoption Court as per O.M. No. D12-10890/2016 of the High Court of Kerala. According to the learned counsel, the jurisdictional court with respect to the present adoption is Family Court, Kottarakara.

In the result, the impugned order passed by the District

Judge, Kollam is set aside and appeal allowed. The District Court, Kollam is directed to return the records to the petitioners for presentation before the proper court. Sd/-

M.R.ANITHA
JUDGE

rps/

APPENDIX OF CRL.A 971/2019

PETITIONER ANNEXURE

ANNEXURE A1

CERTIFIED COPY OF ORDER DATED 15.3.2019
PASSED BY THE DISTRICT COURT KOLLAM IN
OP (ADOPTION) 75/2016 AND CONNECTED CASES.