

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 672 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 16799 of 2022
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2023
In R/LETTERS PATENT APPEAL NO. 672 of 2023

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REGISTRAR, BIRTH AND DEATH REGISTRATION DEPARTMENT
Versus
NITESHBHAI NARSHIBHAI MANGROLA

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Appearance:
MR KAUSHAL D PANDYA(2905) for the Appellant(s) No. 1
for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 27/06/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Heard learned advocate Mr.Kaushal Pandya for the appellant.

2. The present Letters Patent Appeal under Clause 15 of the Letters Patent is directed against common judgment and order dated 17.2.2023 passed in group of Special Civil Applications, insofar as the said common judgment pertained to Special Civil Application No.16799 of 2022.

2.1 The petitioner of the said petition Nitesh Narshibhai

Mangrola prayed in his petition to set aside the decision reflected in communication dated 11.5.2022 of the Sub-Registrar, Births and Deaths, Surat Municipal Corporation, whereby the prayer of the petition for changing the name of the father from Vishalbhair Bhanubhair Pansuriya to Niteshbhair Narshibhair Mangrola came to be rejected.

2.2 The prayer for changing of name of the father was advanced on the basis of the Registered Adoption Deed. The authority did not accept to the said request on the ground that the order of competent court was necessary.

3. In the petition, the petitioner also prayed to direct respondent No.2 to carry out the change in name. It was stated by the petitioner that marriage between the petitioner and one Payalben, daughter of Bhikhabhair Haribhair Longhan was solemnized on 14.2.2019. The marriage was registered with the Registrar of Marriage. It was stated that before the said Payalben married with the petitioner, she had already married with another Vishalbhair Bhanubhair Pansuriya, in the year 2013 and child named Pal was born out of the wed-lock. The said Vishalbhair died in the year 2018, thereafter Payalben remarried with the said petitioner.

3.1 The child Pal was adopted and the present petitioner became father and guardian under Registered Adoption Deed dated 12.12.2019. Seeking to change the name of the father of the said child, it was stated that without the change of name of the father, the petitioner had been facing difficulties in processing Aadhar Card, Bank Account, Passport of the said

child. The application moved before the Registrar of Births and Deaths - respondent No.2 herein came to be rejected.

4. The decision of learned single Judge allowing the petition came to be challenged by raising various grounds. It was submitted that order was passed on misinterpretation of the Rules, the Rules called the Adoption Regulations, 2022, Chapter-VI were pressed into service by relying on the regulations 40 which *inter alia* provides that the Registrar under the Registration of Births and Deaths Act, 1969 shall issue birth certificate within five days of adoption child upon application in accordance with the circular issued from time to time.

4.1 It was sought to be submitted that the said Rule was required to be followed by learned single Judge. It was submitted that merely on the basis of the Registered Adoption Deed, the Registrar of Births and Deaths was not obliged to effect the change in name.

4.2 Section 15 of the Act was relied on to submit that the correction could be made only if the entry is erroneous in form or substance or if fraudulent or improperly made. It was submitted that any ground did not exist as per the Section 15 of the Act to allow the change of the name of the father of the child.

5. Learned single Judge relied on the decision of this court in **Nitaben Nareshbhai Patel Vs. State of Gujarat [2008 (1) GLR 884]**. In the said decision, this court considered the scope of Section 15 and drew the conclusions. In **Nayankumar**

Rajnikaben Trivedi Vs. District Education Officer, [AIR 2004 Guj. 53], on the basis of the Registered Adoption Deed, the right to change the name was asserted before the court.

5.1 The court extracted propositions of law from another decision in **Amruta Vijay Vora Vs. Union of India in Special Civil Application No.11959 of 2002**, in para 6 thus,

“Even otherwise also, as per section 16 of Hindu Adoption & Maintenance Act, 1956 (hereinafter referred to as "the Act") when any adoption deed is registered there shall be a presumption for documents relating to the adoption and the presumption shall be that the adoption has been made in compliance with the provisions of Act unless and until it is disproved. Such presumption can be made applicable not only in court proceedings but such presumption in view of Section 16 can also reasonably be made applicable even at the time when the authority has to consider the matter for issuance of passport because the passport authority while considering the matter for issuance of passport is also acting as a quasi judicial authority.”

5.1.1 In that case the Regional Passport Officer was directed to consider the application and to issue the passport by changing name. In **Nayankumar Rajnikaben Trivedi (supra)** it was observed and held in para 7 that since the adoption deed was registered one, the presumption under Section 16 of the Hindu Adoption & Maintenance Act, 1956 can be drawn,

“In any event, the petitioner is lawfully adopted by a Hindu lady and the Deed of Adoption is

registered and therefore the presumption as per the provisions of section 16 of Hindu Adoption and Maintenance Act, 1956 can be drawn in favour of the petitioner also. The said presumption would operate so long as there is no challenge or such presumption is not rebutted by the procedure known to law. It is not the case of any of the respondent that there are facts and circumstances which would not attract such presumption. The said aspect is coupled with the fact that for change of the name of the petitioner by changing his identify, it is also published in the Government Gazette dated 10.4.2003 and therefore a judicial notice can be taken that such adoption is accordingly notified in the government gazette and known to the public at large.”

5.2 Similar was the controversy in **Bhavya Rajeshkumar Patel Vs. State of Gujarat being Special Civil Application No.9930 of 2015** decided on 10.12.2015. The law discussed on the point in **Bhavya Rajeshkumar Patel (supra)** referring to and relying on **Nitaben Nareshbhai Patel (supra)** applies in the facts of the present case. The decision in **Manoj Omprakash Goyal Vs. State of Gujarat [2011 (2) GLH 455]** as well as **Rameshbhai Nathubhai Solanki Vs. Rajkot Municipal Corporation [2013 (2) GLR 1535]** were referred to and relied on the same decision relying the same proposition of law.

5.2.1 The court stated in para 5 referring to **Nitaben Nareshbhai Patel (supra)**,

“Respondent No.2 which is the competent authority functioning under the Registration of

Births and Deaths Act is vested with statutory power under Section 15 of the said Act which empowers the authority to effect correction in the entries in the Birth Certificate. The decision of this Court in Nitaben Nareshbhai Patel Vs State of Gujarat[(2008) 1 GLR 884] held that the authority under the Act is duty bound to exercise powers under Section 15 of the Act read with Rule 11 of the Gujarat Registration of Birth and Death Rules, 2004 and consider the request for corrections in the Birth Certificate. It is held that a writ of mandamus can be issued since the authority is statutorily enjoined to act.”

5.2.2 It was observed in para 6.1 that the Registered Adoption Deed has to be treated valid,

“The date of birth and the other details of the petitioner is already recorded in the Birth Certificate issued by the authority at the relevant time. It cannot be gainsaid that the registered Adoption Deed has to be a valid aspect to go into the consideration of the authority when he deals with the application of the petitioner for correction in the Certificate of Birth.”

5.3 In **Bhavya Rajeshkumar Patel (supra)** also the authority has rejected the prayer of the petitioner by stating that the petitioner should obtain a writ from the court. The following was further observed in para 6.2,

“In Amruta Vijay Vora Vs Union of India [2013 (2) GLR 2625], the petitioner wanted the name of adoptive father inserted in the passport on the basis of registered Deed of Adoption. This Court observed and held that as per Section 18 of Hindu Adoption and Maintenance Act, 1956,

when any Adoption Deed is registered there shall be a presumption for documents relating to the adoption and the presumption shall be that the adoption has been made in compliance with the provisions of the Act unless and until it is disproved. It was observed that such presumption can be made applicable not only in court proceedings but such presumption in view of Section 16 can also reasonably be made applicable even at the time when the authority has to consider the matter for issuance of passport because the passport authority while considering the matter for issuance of passport is also acting as a quasi-judicial authority. It has to be stated that though the aforesaid decision is with regard to the change in the passport details, the principle about the legal assertiveness of registered Adoption Deed would apply. The authority under the Registration of Birth and Death Act has to act in accordance with law exercising powers under Section 15 read with Rule 11 of the Rules in relation to the application made by the petitioner.”

5.4 The outweighing aspect in the facts of this case is that the change of the name of the father was prayed for on the basis of the Registered Adoption Deed. The petitioner became adoptive father of the child in view of the execution of Registered Adoption Deed. The Registered Adoption Deed is binding to the authority under the Registration of Births and Deaths Act. Once it is registered deed of adoption, its validity and effect cannot be called in question by the respondent authority. The Registrar is bound in law to incorporate change in the register of Births and Deaths on the basis of the Registered Adoption Deed. The same cannot be ignored or disregarded for its effect.

6. For the aforesaid reasons and discussion, the view taken by learned single Judge and the consequential order granting relief to the petitioner is eminently legal and proper. No interference is called for.

7. The Letters Patent Appeal is dismissed.

In view of dismissal of the Appeal, the Civil Application will not survive. It is accordingly disposed of.

(N.V.ANJARIA, J)

(J. C. DOSHI, J)

Manshi