

“Case Commentary - Sohan Lal V. Addl. District & Sessions Judge, 2015”

CITATION- AIR 2015 ALL 33

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ABSTRACT:

The practice of adoption has been prevalent in the Indian society since time immemorial and every religion has its own prescribed process regarding the same. Adopting a child is something which gives immense pleasure and satisfaction to a married couple, who either are not fortunate enough to procreate or are willing to share their affection by adopting a child who lacks the love and care of his/her parents.

Through this case commentary, I will be looking into the definitions of “Hindu” and “Guardian” and as to who is capable of adopting and which child qualifies the criteria of being available for adoption.

RELEVANT FACTS:

Controversy in this case arises from the judgement of a lower court, where petitioners were denied permission by the learned Additional Sessions Judge to adopt Master Ansh for the following reasons:

- It is not clear what the religion of Master Ansh is because his mother is deaf and dumb and hence cannot be brought within the ambit of Hindu Adoption and Maintenance Act, 1956 and thus, must be adopted under the Juvenile Justice (Care and Protection of Children) Act, 2000.
- In accordance with the guidelines issued by the Central Government under section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000, the aggregate age of both the potential adoptive mother and father must not be more than 90 years. In the present case the aggregate age of the petitioners was 91 years.
- The above stated was held by the Sessions Court despite the fact that both the sign language interpreter and the State Women Protection Home have testified that from her gestures and behaviour it was clear to them that she is a Hindu.
- Maina (Opposite Party no.3) is the mother of Master Ansh. She is deaf and dumb. Her husband has abandoned her, and his whereabouts are unknown.
- Both Opposite Party No.3 and Master Ansh lived in the State Women Protection Home, where Master Ansh will not be allowed to live once he attains the age of 7 years.
- The Petitioners had made an application to the Court under Section 9(5) of the Hindu Adoption and Maintenance Act. The Opposite Party No.3 along with the State Women Protection Home also filed an application requesting adoption of her son under Section 9(5).

- The Petitioner disclosed: A yearly income of 9,60,000 rupees; that he owns agricultural land; that he is a lawyer by profession; that him and his wife were married for the past 19 years and had a son out of the wedlock, who died in 2009.

The petitioner had approached the High Court under Article 226 of the Indian Constitution challenging the order of the Additional Sessions Judge.

ISSUES:

- I. Whether Master Ansh is a “Hindu” under the Hindu Adoption and Maintenance Act, 1956?
- II. Whether Master Ansh has been abandoned by Opposite Party 3, and if so, can the State Women Protection home file an application for adoption under Hindu Adoption and Maintenance Act, 1956 as his “Guardian”?

ANALYSIS:***Whether Master Ansh is a “Hindu” under the Hindu Adoption and Maintenance Act, 1956 (the Act)?***

Section 10 of the Act mandates that only a Hindu child may be adopted under the Act. The Sessions Court in its judgement gave the reasoning that there is no evidence, despite the communications made by Opposite Party 3 through gestures.

Arguments of the Petitioner

The Petitioner argued that the purpose of the Act was not to limit adoption to the children that are Hindus, but rather to limit it to those children that may be “regarded as Hindu”.

The sign language interpreter had clearly said that on questioning Opposite Party No.3 as to who she prays to (asking her to point at images provided by the language interpreter of different deities belonging to different religions) she indicated that she prays to Sai Baba and Shiva, by pointing at their images.

Further it has been testified by the Superintendent of the State Women Protection Home that she has been seen by inmates and by the Superintendent herself, wearing a pendant that had the image of Shiva.

Besides, the Superintendent in her affidavit also stated that from various activities performed by the mother of the child, she appears to be following the Hindu religion.

In light of the above stated reasons, according to the Petitioner, the child can be “regarded as a Hindu”.

Arguments of the Respondent

The main reasoning of the respondent was that since Opposite Party no.3 was not even able to tell the State Women Protection Home her address, the name of her husband who deserted

her, etc, she cannot be regarded as fit enough to raise a child in accordance with Hindu principles, and her statement that she observes Hinduism cannot be relied upon.

Analysis

While ascertaining whether Master Ansh is Hindu the court delved into the question of what it means to be a Hindu.

In accordance with the Court it is difficult to define who exactly is a Hindu, to substantiate the point, it referred to the judgement of Justice P.B.Gajendragadkar, the then Chief Justice of India in the case of *Shastri Yagnapurushdasji and others vs Muldan Bhundardas Vaishya and another*, where Justice Gajendragadkar describes the Hindu religion as follows:

“When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more.”

Making a reference to other faiths Justice Gajendragadkar quotes Max Mueller:

“Buddha started Buddhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion, Dnyaneshwar and Tukaram initiated the Varakari cult; Guru Nank inspired Sikhism; Dayananda founded Arya Samaj, and Chaitanya began Bhakti cult; and as a result of the teachings of Ramakrishna and Viveka-nanda, Hindu religion flowered into its most attractive, progressive and dynamic form.”

Apart from the abovementioned judgement cited by the High Court Later, in 1996, in *Commissioner Wealth Tax, Madras vs Late R Sridharan*, the Supreme Court ruled that:

“It is a matter of common knowledge that Hinduism embraces within self so many diverse forms of beliefs, faiths, practices and worships that it is difficult to define term ‘Hindu’ with precision.”

A controversy here arises with respect to the Hindu religion and the perception of its History itself with respect to its interaction with different faiths. According to Historians such as Irfan Habib, Buddhism as a faith sprang and spread through the Dalits and Shudras in the Mauryan age in Indian history. This was mainly because of the ill treatment faced by the Dalits and Shudras during this period.

However, in the medieval era during the 10th and the 9th century, there was revival of Brahmanism and the Puranas were written. In the Puranas both Lord Mahavira and Lord Buddha were regarded as an incarnation of Lord Vishnu, thus appropriating Jainism and Buddhism into Hinduism.

It is the argument of some Historians like Habib that such appropriation in itself should not be adhered to in assessing whether these other faiths are a part of Hinduism.

Thus, the above reasoning of the Court, in assessing Hinduism may not be correct. However, the Court has further referred to other provisions of the Act to regard the child as Hindu. According to the Court the child can, be "regarded as Hindu" both in terms of Explanation (b) and Explanation (bb) to Section 2 (1) of the Act, regardless of the opinion of Hon'ble Justice Gajendragadkar.

Whether Master Ansh has been abandoned by Opposite Party 3, and if so, can the State Women Protection Home file an application for adoption under Hindu Adoption and Maintenance Act, 1956 as his "Guardian"?

Arguments of the Petitioner

The Petitioner made the following arguments for the above stated issue:

The child cannot be regarded as abandoned because in accordance with the statements made by the Superintendent it is clear that Opposite Party no.3 has been raising the child in accordance with the Hindu tradition, this in itself means that the mother is giving adequate attention to the child, and thus the child cannot be considered as abandoned.

Regardless of whether the question of abandonment is answered in the affirmative or the negative, it is clear that the State Women Protection Home has been raising the child, in the sense that it is providing for the child's needs and the women inmates are engaged in attending to his needs and therefore the State Women Protection Home can be regarded as his "Guardian" and file for adoption under the act.

Arguments of the Respondent

The Respondents arguments did not address the second question in the aforesaid issue and only referred to the first one. It was the argument of the respondent that neither the mother, nor the State Women Protection Home can file the application because the child was abandoned as his mother said that it does not matter to her if she does not have his custody.

Analysis

While the Court tried to interpret the definition of the term "guardian", it rightly adopted the purposive method of interpretation, delving into the statutory history of the provisions of the Act, instead of sticking to the letter of the law. It referred to the statutory history of the Section 9.

Prior to enactment by the Parliament of the Hindu Adoptions Act, in the old Hindu Law only parents were capable to give a child in adoption. Since a child could be given in adoption only by his father or his mother and such giving was an essential part of the ceremony

relating to adoption, an orphan could not be adopted. Adoption of an orphaned child amongst Hindus was possible only where any custom permitted such adoption.

This legal position, prior to enactment of the Hindu Adoptions Act, 1956, was not satisfactory for the reason that it was an orphan who was needed to be adopted by someone and it is an orphan who could not be adopted for the reason that the law did not permit such adoption. The Central Legislature, being conscious of such an anomalous situation, while enacting the Hindu Adoptions Act provided space where even an orphan can now be adopted.

Section 9 of the Hindu Adoptions Act, apart from permitting the father and the mother, also permits the guardian of a child to give the child in adoption. Section 9 as it existed prior to its amendment in 1962, though permitted the guardian of a child to give him/her in adoption with the previous permission of the court, however, such adoption was permissible only in case the parents were dead or had completely and finally renounced the world or had been declared by a court to be of unsound mind. The provision, as it existed prior to 1962, thus, did not permit an abandoned child to be given in adoption by a guardian. It is also noticeable that the definition of "guardian" was also confined to mean only a testamentary guardian or a guardian appointed or declared by a court.

The Statement of Objects and Reasons of the Amending Act clearly encases the object of permitting abandoned children, brought up in foundation homes or other children institutions, to be given in adoption as the management of such homes or institutions having the care and custody of such orphaned children, for all practical purposes, is their guardian and hence, the Parliament in its wisdom thought it appropriate to provide for giving such a child in adoption by the management of such homes or institutions being his/her guardian, albeit with the permission of the court.

Thus, the State Women Protection Home falls under the definition of "guardian" and regardless of whether Opposite Party 3 is capable of filing an application for adoption, the application filed by the State Women Protection Home is tenable.

CONCLUSION:

While the instant judgement is not landmark, it is a pretty important one. The case sets an importance precedent in deciding questions of law relating to definitions under the Hindu Adoption and Maintenance Act. The reasoning given by the Court while deciding the first issue relating to the religion of the child and its delving into the academic question of what exactly is "Hinduism" is highly questionable, because history of religion can be viewed from different points of view as explained in the analysis of the first issue. From the point of view of Marxist Historiography as propagated by historians such as Habib the explanation by the court would be wrong.

However, the second reason given by the Court to declare the child Hindu was sound and based on a very literal interpretation of the law in the context of the facts of the case.

The second issue was even more important than the first issue because the picture painted by the respondent suggested that a) the child is abandoned and b) the State Women Protection Home is not the guardian of the child, thus disregarding the care and protection being provided by abandoned children being raised in such organization. The Court rightly gave the word “guardian” a purposive and wider interpretation allowing for the inclusion of the State Women Protection Home.

REFERENCES:

- Hindu adoption and maintenance Act, 1956
- Shastri Yagnapurushdasji and others vs Muldan Bhundardas Vaishya and Another, 1966 AIR 1119 (India).
- Inder Singh v. Kartar Singh (AIR 1966 Punj. 258), as cited in Paras Diwan, Family Law, (Allahabad Law Agency, Faridabad, Seventh Edition 2005), p. 307
- Chandrashekhara Mudaliar v. Kulandaiveluo Mudaliar AIR 1963 SC 185 (India).