Akella Lalitha vs Konda Hanumantha Rao on 28 July, 2022

Author: Krishna Murari

Bench: Chief Justice, Krishna Murari, Hima Kohli

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6325-6326 OF 2015

MRS. AKELLA LALITHA … APPELLANT (S)

VERSUS

SRI KONDA HANUMANTHA RAO & ANR. … RESPONDENT (S)

JUDGMENT

KRISHNA MURARI, J.

1. These appeals impugn common final judgment dated 24.01.2014 in F.C.A. no. 236 of 2011 filed by the respondents and F.C.A. No. 403 of 2012 filed by the appellant; passed by the High Court of Andhra Pradesh. In these appeals, the subject matter of dispute between the mother and the parents of the deceased father of the child (grandparents) is the surname given to the child. While the issue of visitation rights was also advanced in the pleadings, no arguments were made in Court regarding same and therefore we have not considered the judgment of the High Court on the said aspect.

Brief facts

2. The Appellant married Konda Balaji, son of respondents, on 18.12.2003. A Child was born out of the wedlock on 27.03.2006. However, the husband of the Appellant expired on 14.06.2006. At the time the child was merely 2 ½ months old. Thereafter, the Appellant married Sri Akella Ravi Narasimha Sarma, a Wing Commander in IAF on 26.08.2007. Out of this wedlock, the couple had a child and they live together. Presently, the child Master Ahlad Achintya is still a minor aged 16 years and 4 months.

3. On 9th April, 2008, the respondents had filed a petition under Section 10 of the Guardian and Wards Act, 1890 for appointing them as Guardians of Master Ahlad Achintha, son of the appellant. At the time of filing the petition the child was aged about 2 years old and the respondents made the following prayer:

> a) To appoint the petitioners as Guardians to the Minor Child namely Ahlad Achintha, aged 2 years for their person.
>
> b) To grant visiting rights of the minor child pending disposal of O.P.
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> c) For costs of the petitioner, and
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> d) For such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case and in the interest of justice.

4. The Trial Court vide Order dated 20.09.2011 dismissed the Petition filed by the respondents and was of the opinion that it would not be appropriate to separate the child from the love and affection of his mother. The Trial Court also took into account the old age of the Respondent grandparents. It however, granted visitation rights to the respondents and directed the Appellant and her husband to bring their child to the house of her parents at Hyderabad once in three months in the end preferably on Dussehra and Deepavali festivals and Sankranthi festival days and during school vacations. The respondents were permitted to see their grand son during such period for 2 days from sunrise to sunset.

5. The Order of the Trial Court was challenged in appeals before the High Court by both the parties. During the course of arguments, it was brought to the notice of the High Court that the surname of the child was changed from Konda to Akella. The High Court disposing of the petition vide common judgment dated 24.01.2014 passed the following directions:

> a) The Appellant i.e., Akella Lalitha would be the natural guardian of the child, but shall be under obligation to bring the child to the residence of the respondents in such a way that the child will be with them for a period of 2 days during winter vacation.

The respondents shall also be entitled to see the child in the residence of the Appellant, with prior intimation;

b) The Appellant shall complete the formalities for restoration of the surname and father's surname of the child within a period of three months from the date of receipt of a copy of this order; and

c) So far as the name of the father of the child is concerned, it is directed that wherever the records permit, the name of the natural father shall be shown and if it is otherwise impermissible, the name of Ravi Narasimha Sarma, shall be mentioned as step-father.

This common judgment of the High Court is challenged by the appellant in the present appeals. The primary issues that require adjudication are :-

> I. Whether the mother, who is the only natural/legal guardian of the child after the death of the biological father can decide the surname of the child. Can she give him the surname of her second husband whom she remarries after the death of her first husband and can she give the child for adoption to her husband?
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> II. Whether the High Court has the power to direct the Appellant to change the surname of the child specially when such relief was never sought by the respondents in their petition before the trial Court?
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> Issue I

6. Addressing the first issue, both the lower Courts have concurred that the mother is the natural guardian of the child after the demise of the father.

7. Section 6 of the Hindu Adoption and Maintenance Act, 1956 provides as under :-

> "The natural guardians of a Hindu, minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are – (a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; (b) in the case of an illegitimate boy or an illegitimate unmarried girl – the mother, and after her, the father; (c) in the case of a married girl – the husband".

8. Section 9(3) of the Hindu Adoption and Maintenance Act, 1956 provides that, "9(3) The mother may give the child in adoption if the father is dead or 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. "

9. In the case of Githa Hariharan and Ors. vs. Reserve Bank of India and Ors.1 this Court elevated the mother to an equal position as the father, bolstering her right as a natural guardian of the minor child under Section 6 of the Hindu Minority and Adoption Act, 1956.

10. After the demise of her first husband, being the only natural guardian of the child we fail to see how the mother can be lawfully restrained from including the child in her new family and deciding the surname of the child. A surname refers to the name a person shares with other members of that person's family, distinguished from that person's given name or names; a family name. Surname is

not only indicative of lineage and should not be understood just in context of history, culture and lineage but more importantly the role it plays is with regard to the social reality along with a sense of being for children in their particular 1 MANU/SC/0117/1999 environment. Homogeneity of surname emerges as a mode to create, sustain and display 'family'.

11. The direction of the High Court to include the name of the Appellant's husband as step-father in documents is almost cruel and mindless of how it would impact the mental health and self-esteem of the child. A name is important as a child derives his identity from it and a difference in name from his family would act as a constant reminder of the factum of adoption and expose the child to unnecessary questions hindering a smooth, natural relationship between him and his parents. We, therefore, see nothing unusual in Appellant mother, upon remarriage having given the child the surname of her husband or even giving the child in adoption to her husband.

12. While an adoption deed is not necessary to effect adoption and the same can be done even through established customs, in the present case the Appellant submits that on 12th July, 2019, during the pendency of the present petition, the husband of the Appellant/ step father of the child adopted the child by way of Registered adoption deed. Section 12 of the Hindu Adoption & Maintenance Act, 1956 provides that " An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family."

13. According to the Encyclopedia of Religion and Ethics- "Adoption indicates the transfer of a child from old kinsmen to the new. The child ceases to be a member of the family to which he belongs by birth. The child loses all rights and is deprived of all duties concerning his natural parents and kinsmen. In the new family, the child is like the natural-born child with all the rights and liabilities of a native-born member." Therefore, when such child takes on to be a kosher member of the adoptive family it is only logical that he takes the surname of the adoptive family and it is thus befuddling to see judicial intervention in such a matter.

14. While the main object of adoption in the past has been to secure the performance of one's funeral rights and to preserve the continuance of one's lineage, in recent times, the modern adoption theory aims to restore family life to a child deprived of his or her biological family . Therefore, in light of the above observations, the first issue is settled in favour of the appellant.

Issue II

15. Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/ son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

16. In the case of Messrs. Trojan & Co. Ltd. Vs. Rm.N.N. Nagappa Chettiar2, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:-

> "It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case." 2 AIR 1953 SC 235

17. In the case of Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors.3 held:

> "Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

18. In this case while directing for change of surname of the child, the High Court has traversed beyond pleadings and such directions are liable to be set aside on this ground.

19. Before parting with this subject, to obviate any uncertainty it is reiterated that the mother being the only natural guardian of the child has the right to decide the surname of the child. She also has the right to give the child in adoption. The Court may have the power to intervene but only when a prayer specific to that effect is made and such prayer must be centered on the premise that child's interest is the primary consideration and it outweighs all other considerations. With the above observations the directions of the High Court so far as the surname of the child is concerned are set aside.

20. As a consequence, the appeals stand allowed in part. 3 AIR 2010 SC 475

21. Looking to the nature of the case and the position of the parties, they are directed to bear their own costs and expenses incurred in these appeals.

……,J (DINESH MAHESHWARI) ……J. (KRISHNA MURARI) NEW DELHI;

28TH JULY, 2022