

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 17691 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE SMT. JUSTICE ABHILASHA KUMARI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?
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PATEL LABHUBEN BHAGVANDAS....Petitioner(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR KAMLESH S KOTAI, ADVOCATE for the Petitioner

MS SHRUTI PATHAK, ASSISTANT GOVERNMENT PLEADER for Respondent(s) No. 1

MR MEHULSHARAD SHAH, ADVOCATE for Respondent(s) No. 2

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CORAM: HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

Date : 27/02/2015

ORAL JUDGMENT

1. Learned advocate for the petitioner has moved a Draft Amendment. The same is granted and may be

carried out during the course of the day.

2. Rule. Ms.Shruti Pathak, learned Assistant Government Pleader, waives service of notice of Rule on behalf of respondent No.1 and Mr.Mehul Sharad Shah, learned advocate, waives service of notice of Rule on behalf of respondent No.2. On the facts and in the circumstances of the case, and with the consent of the learned counsel for the respective parties, the petition is being heard and decided finally.

3. This petition under Article 226 of the Constitution of India, has been preferred with the following prayers:

“(A) Your Lordship be pleased to admit and allow this petition;

(B) Your Lordship be pleased to quash and set-aside the order and judgement passed by the 9th Judicial Magistrate First Class, Mehsana on dtd.05/11/2014 for not considering the correction in Birth Certificate of namely Roshni in the interest of justice.

(C) Your Lordship be pleased to pass

such other and further orders may be deemed just and proper looking to the facts and circumstances of the case and in the interest of the justice;"

4. The brief facts of the case are that the petitioner is the adoptive father of the girl Roshni, whose mother, Chetnaben, married the petitioner on 25.11.1998, after she divorced her former husband. Since then, the petitioner is taking care of the girl, Roshni. According to the petitioner, he has legally adopted Roshni and an Adoption Deed has been placed on record at Annexure-B of the petition. The petitioner made an application for the substitution of the name of the biological father of Roshni with his own name before respondent No.2, the Registrar, Births and Deaths, Mehsana. The said application was rejected by respondent No.2, vide order dated 03.06.2014. The petitioner challenged the order passed by respondent No.2 before the learned Chief Judicial Magistrate, First Class, Mehsana, who rejected the application on the ground that he is not empowered to exercise power under Section 15 of the Registration of

Births and Deaths Act, 1969. Aggrieved by the aforesaid orders, the petitioner has approached this Court by way of the present petition.

5. Mr.Kamlesh S.Kotai, learned advocate for the petitioner, has submitted that when the girl Roshni has been adopted by the petitioner by a valid Adoption Deed, there is no reason for respondent No.2 to reject the application of the petitioner for the substitution of his name in place of the name of her biological father. It is further submitted that the learned Chief Judicial Magistrate has wrongly passed the order and in view of the judgment of this Court dated 22.01.2013, in Special Civil Application No.4611 of 2012, it has been held that he is empowered to decide the application of the petitioner.

6. Mr.Mehul Sharad Shah, learned advocate for respondent No.2, submits that the Commissioner, Health and Medical Services and Medical Education, Gandhinagar, has issued a Circular dated 04.11.1999, by which it has been provided that in cases of adoption of a child, the

adoptive father has to apply to the learned Magistrate having jurisdiction and after considering the relevant evidence and the affidavit filed by the biological mother/ father, the learned Magistrate may direct the Registrar, Births and Deaths, to replace the name of the adoptive father / mother. It is further submitted that in a similar case, being Special Civil Application No.4611 of 2012, this Court, after considering the Circular dated 04.11.1999, has been pleased to pass an order dated 22.01.2013, directing the petitioner to file an application before the learned Judicial Magistrate, First Class, and the learned Magistrate was directed to consider the same in accordance with law. It is submitted that similar directions can be issued in the present case, as well.

7. This Court has heard learned counsel for the respective parties, perused the averments made in the petition and other documents on record.
8. In view of the Circular dated 04.11.1999, issued by the Commissioner, Health and Medical Services

and Medical Education, Gandhinagar, it is clear that in cases of adoption of a child, the adoptive father is required to apply to the learned Magistrate having jurisdiction who shall, after considering the relevant evidence and the affidavit(s) of the biological mother/ father, direct the Registrar, Births and Deaths Registration, to substitute the name of the adoptive father / mother.

9. As the facts and circumstances of the present case are on the same footing, the requirements of the Circular dated 04.11.1999, would have to be fulfilled. Therefore, it cannot be said that the learned Chief Judicial Magistrate, Mehsana, does not have the power to direct the Registrar, Births and Deaths Registration, to substitute the name of the petitioner, being the adoptive father and remove the name of the natural father after following the due procedure as described in the Circular dated 04.11.1999.
10. For the aforesaid reasons, the following order is passed:

The petitioner shall make an application to the learned Chief Judicial Magistrate, First Class, Mehsana, who shall consider and decide the same in accordance with law and the Circular dated 04.11.1999. The application shall be made by the petitioner within a period of two weeks from today. The learned Chief Judicial Magistrate, First Class, Mehsana, is directed to decide the application within a period of four weeks from the date of its receipt.

11. The petition is partly-allowed in the above terms. Rule is made absolute to the above extent. There shall be no orders as to costs. It is made clear that the Court has not entered into the merits of the case.

12. Direct Service is permitted.

(SMT. ABHILASHA KUMARI, J.)

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