



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 30TH DAY OF APRIL, 2024
BEFORE
THE HON'BLE MR JUSTICE E.S.INDIRESH
WRIT PETITION NO.102673 OF 2024 (GM-FC)

BETWEEN:

1. SHRI. MADHU S/O. YALLAPPA NAYAR
AGE: 43 YEARS, OCC: PRIVATE WORK,
R/O: NO.22, MALLIKARJUN NAGAR,
SAVADATTI ROAD, DHARWAD-580006.
2. SHRI. RAJU S/O. YALLAPPA NAYAR
AGE: 44 YEARS, OCC: BUSINESS,
R/O: GANAG ELITES (APARTMENT),
BESIDE DOMINO'S PIZZA,
BEHIND APOLO PHARMACY,
TOL NAKA, P.B.ROAD, DHARWAD-580008.
3. KUMAR. NANDAKESHAV @ ADHRIT
S/O. MADHU NAYAR,
AGE: 07 YEARS, OCC: STUDENT,
R/O: GANAG ELITES (APARTMENT),
BESIDE DOMINO'S PIZZA,
BEHIND APOLO PHARMACY,
TOL NAKA, P.B.ROAD, DHARWAD-580008.

(SINCE PETITIONER NO.3 IS MINOR,
HE IS R/BY HIS ADOPTED FATHER
SHRI. RAJU S/O. YALLAPPA NAYAR
I.E.PETITIONER NO.2)

...PETITIONERS

(BY SRI.R.H.ANGADI, ADVOCATE)

AND:

1. SHRI. VEERAPPA S/O. BASAPPA KADAMPUR
AGE: 76 YEARS, OCC: RETIRED.
2. SMT. SULOCHANA W/O. VEERAPPA KADAMPUR
AGE: 62 YEARS, OCC: HOUSEHOLD WORK,
BOTH ARE R/O H.NO.179, 5TH NAGAGR,



C.B.NAGAR, NEAR ARAVINDO SCHOOL,
DHARWAD-580007.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO, KINDLY ISSUE A WRIT IN THE NATURE OF CERTIORARI OR QUASH THE IMPUGNED ORDER ON IA NO.6 FILED U/SEC.12 OF THE G AND W ACT, AND I.A.NO.7 FILED U/SEC 151 CPC, DATED 24.04.2024, IN G AND WC NO.10/2023, BY THE PRINCIPAL JUDGE, FAMILY COURT, DHARWAD VIDE ANNEXURE-L, AND CONSEQUENTLY DISMISS IA NO.6 DATED 16.03.2024, FILED BY RESPONDENTS NO.1 AND 2 U/SEC.12 OF THE G AND W ACT, AND ALLOW I.A.NO.7, DATED 01.04.2024, FILED U/SEC 151 CPC, FILED BY THE PETITIONERS BY ALLOWING THIS WRIT PETITION, TO MEET THE ENDS OF JUSTICE.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this writ petition, the petitioner is assailing the order dated 24.04.2024 and order dated 16.03.2024 in G & W No.10/2023 (Annexure-L), passed by the Principal Judge, Family Court, Dharwad, allowing I.A.No.6 in part and rejecting I.A.No.VII filed under Section 151 of CPC by the respondent No.2 therein.

2. The relevant facts for adjudication of this writ petition as averred in the writ petition are that, a child by name Kumar Nandakeshav @ Adhrit S/o. Madhu Nayar was born to Smt. Anupama W/o. Madhu Nayar and Sri.



Madhu S/o. Yallappa Nayar, (petitioner No.1 herein) as per the birth certificate produced at Annexure-B.

3. It is stated that, wife of said Madhu i.e. Smt. Anupama died on 05.08.2020 as per the death certificate produced at Annexure-C. It is further averred by the petitioners in the writ petition that, after the death of his wife, no person was taking care of his minor son Kumar Nandakeshav @ Adhrit and accordingly, in the in the interest of child, the petitioner No.1 has given his son in adoption to his elder brother by name Sri. Raju S/o. Yallappa Nayar. It is further stated in the writ petition that, the ceremony of adoption was held on 14.04.2021 in the house of Sri. Raju Nayar, in the presence of family members. It is also contended by the petitioners herein that, the registered Adoption Deed was executed on 10.08.2021, and therefore, it is stated in the writ petition that the respondent Nos.1 and 2 being the maternal grand parents of the child, have no right to secure the custody of the child. It is also stated in the writ petition that, the



respondent Nos.1 and 2 herein have filed G & W No.10/2023 under Sections 7 and 25 of the Guardian and Wards Act, 1890, on the file of the Principal Judge, Family Court, Dharwad, challenging the Adoption Deed dated 11.08.2021 (Annexure-E). After service of notice, the petitioners herein have entered appearance and filed statement of objections to the main petition. In the meanwhile, the respondents herein have also filed application under Section 12 of the Act, seeking temporary custody of the Ward (Petitioner No.3) as per Annexure-G. The said application was contested by the petitioners herein by filing statement of objections produced at Annexure-H. The trial Court, after considering the applications filed by the respondents herein seeking temporary custody of the child and the application in I.A.No.7 filed by the petitioners herein, urging maintainability of the writ petition, by order dated 24.04.2024, allowed I.A.No.VI in part, however, dismissed I.A.No.VII. Feeling aggrieved by the same, the petitioners herein have presented this writ petition.



4. Heard Sri. R.H.Angadi, learned counsel for the petitioners.

5. It is submitted by the learned counsel appearing for the petitioners that, G & W No.10/2023 filed by the respondents herein itself is not maintainable on the ground that, the petitioners therein have no right to claim custody of the child and in this regard, he submitted that, as the petition itself is not maintainable before the trial Court, whereas the challenge has been made to the Adoption Deed which is said to have been executed by the petitioners herein, inter-se and therefore, the learned counsel for the petitioner contended that, the order impugned is a *non est* and requires to be set aside.

6. Having heard the learned counsel appearing for the petitioners, I have carefully examined the finding recorded by the trial Court in respect of I.A.Nos.VI and VII. Undisputable facts are that, the Ward – Kumar Nandakeshav @ Adhrit S/o. Madhu Nayar is the son of the petitioner No.1. Wife of the petitioner No.1 died on



05.08.2020 and thereafter, it is stated in the petition that, the Ward Kumar Nandakeshav was given in adoption to the petitioner Nos.2 and 3 as per the registered Adoption deed dated 10.08.2021. respondents herein are the grand parents of the Ward through mother side.

7. The respondents herein have filed G & W No.10/2023 before the trial Court challenging the Adoption Deed dated 10.08.2021. The prayer made in the G & W No.10/2023 is culled out as under:

(a) That the Hon'ble Court be declared that the adoption deed No.DWR-4-00106-2021-22 CD No.DWRD 1054 executed by the respondent No.2 null and void and same is not binding on the 1st respondent.

(b) Kindly be direct the respondent No.3 to hand over the custody of the respondent No.1 by name Adhrit in favour of petitioners by allowing the petition.

(c) The right of the Amendment of petitioner be kindly by reserve in favour of the petitioners as and when necessary.

(d) Any other reliefs deemed fit by this Hon'ble Court be kindly be granted in favour of petitioners in the interest of justice and equity.



8. On careful examination of the relief sought for by the respondents herein in the aforementioned petition, the respondents herein have sought for declaration, challenging the adoption deed dated 10.08.2021. The enquiry is said to be conducted in the suit and thereafter, the finding recorded by the trial Court is just and proper as appropriate issue is required to be framed in this regard.

9. In that view of the matter, the respondents herein being the grand parents of the child – Kumar Nandakeshav @ Adhrit S/o. Madhu Nayar, I am of the view that, the finding recorded by the trial Court at paragraph Nos.9 and 10 is just and proper and I do not find reasons for interference under Article 227 of the Constitution of India. Accordingly, the writ petition is dismissed being devoid of merits.

**Sd/-
JUDGE**