

CASE NO.:
Appeal (civil) 1792 of 2004

PETITIONER:
Renubala Moharana & Anr.

RESPONDENT:
Mina Mohanty & Ors.

DATE OF JUDGMENT: 23/03/2004

BENCH:
RUMA PAL & P. VENKATARAMA REDDI.

JUDGMENT:
JUDGMENT

(arising out of S.L.P. (CIVIL) No. 22395 of 2001)

P. Venkatarama Reddi, J.

Leave granted.

The appellants herein filed a petition before the Family Court, Cuttack describing it as a 'petition under Section 7 of the Guardians and Wards Act read with Section 7 of the Family Courts Act'. The prayers made therein are as follows:

- (a) To declare that late Samuel Maharana nick named as 'Gulu' is the father of the minor child 'pupun' alias 'Pallav Pratik Maharana' and not Kanhu Ch. Pattnaik the respondent No.2 and the birth certificate obtained by respondent No.1 is not valid as the same is based on false information. Only the DNA finger print will prove the truth of the respondent No.1.
- (b) To appoint the petitioners as guardians of the person of the said minor child.
- (c) To direct the respondents to deliver the custody of the child to the petitioners within such period as deemed fit by the Hon'ble Court.

According to the petitioners, their son, named Samuel Maharana developed intimacy with the first respondent\027 Meena Mohanty and both of them lived together in the Departmental Quarter allotted to Samuel Maharana. On account of their cohabitation, a male child was born to them on 25th January, 1991. Samuel Maharana and Respondent No.1 named the child as Pallav Pratik Maharana alias Pupun. However, the first respondent got the birth certificate issued by the hospital showing the child's name as Partha Sarathi Patnaik and Kanhu Charan Patnaik as his father. It is alleged that the first respondent\027Mina Mohanty, though married to the second respondent\027Kanhu Charan Patnaik, they were living separately from 1987. Samuel Maharana died on 7th November, 1994 'under mysterious circumstances'. After the death of Samuel, the 2nd respondent executed a document accepting that Pupun was born through Samuel and disclaiming his parentage. After some time, the custody of the child was entrusted to the appellants and Respondent No.1 was frequently visiting the house of the appellants to see the child. On one such occasion i.e., 1st April, 1995, the first respondent sent one of her relations to bring the child to her place with a promise to send him back on the next

day. From then onwards, the child was kept out of the reach of the appellants. A notice was sent by registered post on 22nd September, 1995 to send back the child. However, it was returned undelivered. Hence the petition was filed as aforesaid in the Family Court.

Respondents 1 & 2 took the stand that the child was born through their wedlock and denied the illicit relationship between Samuel and respondent No.1. They claimed to be the natural guardians of the child.

After trial, the Family Court, by its judgment dated 2nd May, 2000 dismissed the petition on the ground that the petition itself was not maintainable in the light of Section 7 of the Family Courts Act. As regards the prayer for guardianship, the learned Judge observed that respondent No.1 being the natural mother against whom there was no adverse allegation, there was no need to appoint any other person as guardian. On appeal to the High Court, the Division Bench of the High Court agreed with the conclusion of the Family Court that the first relief sought for by the appellants cannot be granted by the Family Court for the reason that declaration as to the legitimacy of any person without any claim of marital relationship is not directly entertainable by the Family Court. In view of the admitted fact that Samuel Maharana and respondent No.1 were not married, the child allegedly born through Samuel Maharana can never be a legitimate child. However, the High Court reversed the order of the Family Court insofar as the petition related to the custody of the minor. The High Court held that the prayer for guardianship and custody is entertainable by the Family Court under Explanation (g) to Section 7(1) of the Act. While directing the Family Court to consider the prayer for guardianship and/or custody of the minor, the High Court, having noted the fact that the evidence adduced on behalf of the parties was not discussed and considered, also observed that "in order to determine the question of guardianship or custody of the minor, if it becomes collaterally necessary to consider the question of status of the minor or the parties to the proceedings, the Family Court may be required to consider the same and give its finding". In effect, the High Court held that while deciding the petition for guardianship/custody, the question of status or inter se relationship of the parties can be incidentally considered by the Family Court.

The view taken by the High Court as regards the first prayer has been assailed before us. Under Section 7(1) read with Clause (e) of the Explanation, a suit or proceeding for a declaration "as to the legitimacy of any person" is within the jurisdiction of the Family Court. According to the appellants, the child was born on account of extramarital relationship of Respondent No.1 with their son the late Samuel Maharana. Accepting the case of the appellants, the child cannot obviously be treated as a legitimate child of Samuel and Meena Mohanty (R1). The question of status of the child in relation to the parties to the petition can be incidentally gone into by the Family Court if necessary while deciding the guardianship petition. That liberty has been granted to the Family Court. However, as rightly held by the Family Court and the High Court, the declaratory relief as regards the illegitimacy of the child cannot be granted. In effect, that is what the appellants want under prayer No.1.

We therefore see no ground to interfere with the judgment under appeal. Appeal is dismissed without costs.