

**THE HIGH COURT OF JUDICATURE FOR
MADHYA PRADESH AT JABALPUR**

(Division Bench)

W.A. No. 1072/2019

APPELLANT : Sanjana Soviya
Versus
RESPONDENTS : State of Madhya Pradesh & others

Coram:

**Hon'ble Shri Justice Mohammad Rafiq, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge**

Appearance:

Shri Umesh Shrivastava, Advocate for the appellant.
Shri Bramhadatt Singh, Government Advocate for the respondent
Nos.1 to 3/State.
Shri Pawan Kumar Saxena, Advocate for the respondent Nos.4 and 5.

Whether Approved for Reporting : Yes

Law Laid Down:

➔ The petition filed by someone who claims to be adoptive mother seeking custody of the child from the respondent No.4, who is none other than the natural mother of the child and is disputing the genuineness of adoption deed – **Held** - *writ of habeas corpus* in a case involving such disputed questions of fact cannot be issued against natural mother. However, petitioner may avail her remedy before any other appropriate Court.

Significant Paragraphs Nos.: 6, 8 & 9

Hearing convened through Video Conferencing.

ORDER
(19-01-2021)

The present intra-Court appeal has been filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal)

Adhiniyam, 2005 being aggrieved by the impugned order dated 03.05.2019 passed by the learned Single Judge in WP No.2790/2019 whereby the learned Single Judge dismissed the writ petition of *habeas corpus* and granted liberty to the appellant/writ-petitioner to prefer an appropriate application before the trial Court, as the questions of facts are involved and, therefore, no writ would lie.

2. Learned counsel for the appellant submitted that the appellant has adopted the child by a registered adoption deed. Since as per the provisions of Section 16 of the Hindu Adoption and Maintenance Act, 1956 (for short “the Act”), there is presumption of the correctness of the adoption, therefore, the appellant is entitled for custody of the child.

3. The appellant preferred the writ petition seeking custody of the female child, aged about two-and-a-half years, from the respondent No.4. The undisputed fact is that the respondent No.4 is the mother of the child and, therefore, she is the natural guardian. The appellant submits that she had taken the child after execution of a deed of adoption which was executed by the respondent No.4 in favour of the appellant and, thereafter the child was given to the custody of the appellant by the respondent No.4.

4. It is argued that the child was taken by the respondent No.4 from the appellant on the pretext of playing with child but thereafter the child was never returned to the appellant. Therefore, a *writ of habeas corpus* ought to be issued to restore the custody back to the petitioner, who is her adoptive mother. Learned counsel for the petitioner, in support of his submissions, has relied upon the judgment of the Supreme Court in the case of **Gohar Begum vs. Suggi alias Nazma Begum and others, AIR 1960 SC 93** and a Division

Bench decision of this Court in the case of **Smt. Usha Devi and another vs. Kailash Narain Dixit and others, AIR 1978 MP 24.**

5. *Per contra*, learned counsel for the respondent No.4 submitted that the deed of adoption is a fabricated document and the finger printouts of the respondent No.4 were taken by deceit without her knowledge that she was not a willing party to the adoption deed.

6. Contention of the learned counsel for the appellant that by virtue of Section 16 of the Act, presumption of validity of adoption has to be drawn, cannot be countenanced, as admittedly the parties are Christians and the aforesaid Act does not apply to them. Moreover, considering that the respondent No.4 is disputing the genuineness of the adoption deed, such presumption is always rebuttable. The dispute of this nature cannot be entertained in writ jurisdiction under Article 226 of the Constitution of India for issuance of a *writ of habeas corpus* to hand over the custody of the child to the petitioner.

7. The Division Bench judgment of this Court in **Usha Devi's case (supra)** does not in any manner provide any help to the appellant. In that case, the parents of the child i.e. mother and father had jointly filed the petition for *habeas corpus* seeking custody of the child from the grandfather and uncle of the father of the child. In those facts, the Court held that the child aged 4½ years, has no independent volition of his own and will prefer to live with the person in whose custody he is then. The association of a boy with the other relatives will make him dear to them but such relations in preference to the mother and father, have no legal right to the custody of the minor child and the welfare of the child lies in his living with his natural guardians.

8. Another judgment relied upon by the learned counsel for the appellant in **Gohar Begum's** case (**supra**) also arose out of an appeal filed by an unmarried Sunni moslem woman seeking custody of her illegitimate daughter, aged six years, from the respondent, who was her mother's sister. It was held that under the Muhammedan Law, the appellant was entitled to the custody of the minor illegitimate daughter, no matter who her father was. The respondent had no legal right for the custody of the child. In this case too, the natural mother had approached the Court. The ratio of even this judgment does not in any manner apply to the case of the appellant. In fact, in the present case, the petition has been filed by someone who claims to be adoptive mother seeking custody from the respondent No.4, who is none other than the natural mother of the child and is disputing the genuineness of the adoption deed. *Writ of habeas corpus* in a case involving such disputed questions of fact cannot be issued against natural mother.

9. In view of the aforesaid, the disputed questions of fact cannot be adjudicated in writ jurisdiction under Article 226 of the Constitution of India. We therefore do not perceive any illegality or perversity in the impugned order passed by the learned Single Judge, warranting any interference in this intra-Court appeal, dismissing the writ petition and granting liberty to the appellant/writ-petitioner to avail her remedy before any other appropriate Court.

10. Accordingly, the writ appeal being devoid of merit, is **dismissed**. No order as to costs.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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