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MHCC010055752022



Presented on : 26/05/2022

Registered on : 06/06/2022

Decided on : 02/08/2022

Duration : 02 Months 05 Days

IN THE BOMBAY CITY CIVIL COURT FOR GREATER MUMBAI

EXHIBIT NO.10

S. C. SUIT NO.1162 OF 2022

1. Mr. Nital Bhagwan Tawde,]
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2. Mrs. Shrutika Namle,]
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]]
]]
AND]
]]
] ...Plaintiffs]
V/s.]
Mrs. Sanjana Kate]
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]]
]]
] ...Defendant]

Appearance :-

Ld. Adv. Shubhangi Vaidya a/w Adv. Sanjay Sawant for plaintiff.

Ld. Adv. Reema Swami for defendant.

**CORAM : HIS HONOUR JUDGE
SHAIKH AKBAR SHAIKH JAFAR
COURT ROOM NO.03**

DATE : 02/08/2022.

J U D G M E N T

1 This suit is filed for declaration. Plaintiffs have sought the reliefs on the following nature :-

- a. That this Hon'ble Court be pleased to declare that the plaintiff No.1 & plaintiff No.2 are biological and genetic parents of minor son "Neel" and/or.
- b. That this Hon'ble Court be pleased to declare that permanent removal of the de-facto minor child "Neel" from India to Australia by plaintiffs as biological and genetic parents be permitted under the law.

2 Briefly stated, the case set up by the plaintiffs is that they are the citizens of India and presently residing at 26, Aintree Close, Clyde, Victoria 3978, Australia, on permanent VISA. On 07/03/2019, they had entered into one Surrogacy Agreement with defendant. As per the Agreement, arrangement was arrived at between the plaintiffs & defendant that the defendant will act as a surrogate mother and will give birth to a child/children of the plaintiffs by way of embryos transferred in her uterus with IVF Process. It was categorically agreed that the plaintiffs shall be the legal parents and natural guardians of the child. The defendant will not raise any objection whatsoever nature in respect to the intending parents being the parents of a child. The plaintiffs also gave full financial support to the defendant during the period of pregnancy and complied with all conditions stipulated in the said Agreement with respect to the financial terms and all medical expenses. As per this Agreement, defendant No.1 had agreed to conceive, carry & to give birth to the child of plaintiffs out of her own free will. Both parties carried out their respective obligations under the Agreement and defendant gave birth to a baby boy on 30/10/2019, whose was named as "Neel".

3 It is further contended that the said baby boy “Neel” was born under the said Surrogacy Agreement and there is no denial of the fact that the plaintiffs are the legal parents of a child and they are entitled to take the baby boy “Neel” from India to Australia. They are required to prepare legal documents but, defendant did not co-operate them. Therefore, they are in trouble to keep the baby boy “Neel” with them in Australia. Therefore, they constrained to file the instant suit.

4 In response to the suit summons, defendant appeared and filed her Written Statement (Exh.3). She has admitted each and every averment mentioned in the suit, including an Agreement and giving birth to a baby boy “Neel” as a surrogate mother. She further submitted that she has no objection if, the custody of child is given to plaintiffs and allowed to take a child from India and their declaration as a legal parents of the child “Neel”. Heard both the sides at length.

5 The evidence of plaintiff No.1 is recorded, who categorically explained the case of plaintiffs and the impediment in taking a baby boy “Neel” to Australia and requirements asked by the Embassy of Australia. There is no specific legislation/law in which the plaintiffs may seek declaration regarding the surrogacy process in India. However, there are the guidelines of Indian Council of Medical Research and National Academy of Medical Sciences. The Law Commission of India has also given its Report No.228, in this regard. According to the national guidelines for accreditation/supervision of ART Clinics, 2005 by ISMR/NAMS, the surrogate mother is not considered to be the legal mother. Thus, the plaintiffs are biological & genetic parents of a baby boy “Neel” and they are entitled for the custody of child as well as for removing a child from India to Australia and a child is allowed to reside with them.

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6 Thus, in view of above discussion, I am of the view that there is no legal impediment or otherwise in granting the decree as prayed by plaintiffs. Moreover, when the defendant has accepted the facts leading to the conception and delivery of a child, baby boy "Neel" as surrogate mother and have also given her "No Objection" to the same. In peculiar circumstances, the parties to bear their costs own. With this, I proceed to pass the following order :

ORDER

1. S.C. Suit No.1162/2022, is hereby decreed,
2. It is declared that the plaintiff Nos.1 and 2 are genetic and biological parents of minor son "Neel".
3. The plaintiffs are entitled to take the son "Neel" to their resident in the country Australia.
4. Parties to bear their own costs.
5. Decree be drawn up accordingly.

(Judgment pronounced in open Court)



(Shaikh Akbar Shaikh Jafar)

Judge,

City Civil Court, Greater Bombay

C.R. No.03

Dated : 02/08/2022

Dictated on : 02/08/2022
Typed on : 02/08/2022
Signed on :

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“Certified to be true and correct copy of the original signed order”.

04/08/2022
at about 11.30 a.m.

(Mrs. Vidya Abhijit Mande)
Stenographer (Grade-I.)
Court Room No.03, Gr. Mumbai

Name of the Hon'ble Judge : **Shaikh Akbar Shaikh Jafar,**
Judge, City Civil Court &
Addl. Sessions Judge
Court Room No.03, Gr. Mumbai

Date of pronouncement of Order : 02/08/2022

Order signed by Hon'ble Judge on : 02/08/2022

Order uploaded on : 04/08/2022
at about 11.30 a.m.

IN THE BOMBAY CITY CIVIL COURT FOR GREATER MUMBAI

EXHIBIT NO.10-A

S. C. SUIT NO.1162 OF 2022

(CNR NO.MHCC010055752022)

1. Mr. Nital Bhagwan Tawde,]
aged about 36 years]
2. Mrs. Shrutika Namle,]
aged about 35 years]
Both are resident of 26, Aintree Close,]
Clyde, Victoria 3978, Australia.]
- AND
11/1:4, Akshay Society, Sector-5,]
Sector-15, Airoli, Navi Mumbai 400 708.] ...Plaintiffs

V/s.

Mrs. Sanjana Kate]
Resident of Room No.66,]
Chawl No.39, Transit Camp,]
Reclamation, Opp. Amber Prasad Building,]
Bandra (W), Mumbai 400 050] ...Defendant

Appearance :-

Ld. Adv. Shubhangi Vaidya a/w Adv. Sanjay Sawant for plaintiff.
Ld. Adv. Reema Swami for defendant.

**CORAM : HIS HONOUR JUDGE
SHAIKH AKBAR SHAIKH JAFAR**

COURT ROOM NO.03

DATE : 02/08/2022.

OPERATIVE PART OF THE JUDGMENT

1. S.C. Suit No.1162/2022, is hereby
decreed,

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2. It is declared that the plaintiff Nos.1 and 2 are genetic and biological parents of minor son “Neel”.
3. The plaintiffs are entitled to take the son “Neel” to their resident in the country Australia.
4. Parties to bear their own costs.
5. Decree be drawn up accordingly.

(Judgment pronounced in open Court)

(Shaikh Akbar Shaikh Jafar)
Judge,
City Civil Court, Greater Bombay
C.R. No.03

Dated : 02/08/2022