



Moot Proposition



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MOOT PROBLEM - NO. 3

(FOR SEMI - FINAL ROUND)

1. Mr X and Mr Y are a same sex couple who live in the United States of America. Both of them are Indians by nationality though they have initiated the process of acquiring U.S. citizenship. They have been together in their relationship since 2005 and live together in the same house in the U.S.
2. Mr X and Y are desirous of starting a family and for this purpose, both of them started looking for surrogate mothers based in India. Their plan is to get a child through surrogacy and when the child is a new born, to bring him/her with them to the U.S. on a long term visa.
3. In the year 2013, Mr X and Mr Y identified an agency based in New Delhi which offers surrogacy to foreigners for a high fee. They commenced negotiations with the agency and understood the terms of the agreement. They finally agreed to the surrogacy that it would be traditional surrogacy with Mr Y being the genetic father of the child and the surrogate mother being the genetic mother of the same. The agreement was signed while both Mr X and Y were in the U.S. by means of emails exchanged. The couple deposited the first sum of to the agency amounting to \$2,500 in September, 2014.
4. In February 2015, Mr Y travelled to India and an artificial fertilisation was carried out on the surrogate mother, Ms Z, selected to carry the child. Thereafter, Mr Y returned to the U.S. The couple made the second instalment of the payment of \$2,500 in the same month.
5. On 20th November, 2015, the child, a healthy baby girl, was born to the surrogate mother in New Delhi. Mr X and Y both returned to India and were present at the hospital at the time of the birth of the baby.
6. The final payment of \$2500 was made to the agency by the couple on 21st November, 2015 and as a token of their appreciation, they also paid Ms Z \$1000. Mr Y made an application before the appropriate court that he be considered the child's sole legal guardian.
7. On the 21st of November itself, Mr Y had to suddenly return to the U.S. on urgent business which could not be deferred. Mr X stayed in India at this time. While he was in the U.S., Mr Y was informed that his application process for U.S. citizenship had been successful and he was asked to be present at the Town Hall of the city of San Francisco to take the oath of allegiance to the U.S. Government. Mr Y did as he was told and on 28th November, formally became a U.S. citizen. He informed the Indian High Commission and Embassy in the U.S. of the same.
8. The Indian Embassy in the U.S. asked Mr Y to surrender his Indian passport and to obtain a Person of Indian Origin Card if he so desired.
9. Mr Y realised that this would mean that he would not be able to go back to India immediately.
10. In the meantime, Ms Z claimed that she did not want to give up custody of the child as she had become emotionally attached to it. When she went to meet Mr X in order to see the child, Mr X did not allow her inside the house or to even see the baby. She claimed that she could decide whether she wanted to give the baby or not as that was what the surrogacy agency had told her at the time she decided to carry the child. She is an illiterate woman.

11. Mr X threatened Ms Z that he would call the police and get her arrested and abused her in filthy language. He called her a cheat and said that she was creating this ruckus only to extort more money from the couple. Hearing this, Ms Z forcefully returned the \$1000 they had given her at the time of the birth of the baby.

12. Finally when Mr Y obtained a U.S. passport and was able to visit India, it was December, 2015. He withdrew the earlier proceedings in view of the change of his citizenship, amended the same and filed a fresh proceeding under the Guardians and Wards Act in order to be declared the sole legal guardian of the child.

13. The surrogate mother, who heard from her acquaintances that such a proceeding was pending before the Courts, filed a PIL challenging the proceedings before the Delhi High Court on the grounds that she was cheated and her right to life had been violated. The High Court admitted the petition and stayed the guardianship proceedings that were pending.

14. On 15th January, 2016, the High Court decided by a short order that the issues of fact in the matter needed adjudication and therefore directed the appropriate court under the Guardians and Wards Act to adjudicate the matter while impleading the biological mother as a party in the same.

15. The same matter is pending. Both Mr Y and the biological mother claim guardianship over the child.

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