

JUDGMENT

I ADDL. METROPOLITAN MAGISTRATE, GENOVIA

O. S. XY/2022

Eric and Another v. Ria

With

Cr. Misc. YX/2022

Ria v. Eric

1. As it is well said by our forefathers, "Most of the time for the fault of the parents it is the children who suffer the consequences and hardship in life". This is one such instance where the life and future of the children is at stake and at the mercy of this Court.
2. In this Original Suit for custody of the child, a couple is seeking for the custody of one of the two children born out of the method of Surrogacy. The claim is made against the Surrogate mother who at present is taking care of the needs of the children, as the couple abandoned the children instead of taking their custody according to the terms of the 'so called' surrogacy contract between the parties.

Keeping in mind the above facts of the case, I'm of the following opinion:

1. There exists 'No Contract' which exists between the parties as the essentials are not fulfilled hence the suit filed for possession of the baby is dismissed.
2. The court observes that there has been gross negligence and misconduct on the part of the clinic who, even though, had reason to believe that the ART was being used for surrogacy, failed to conform with the surrogacy laws in force. The court also directs thorough investigation pertaining to such negligence by clinics.

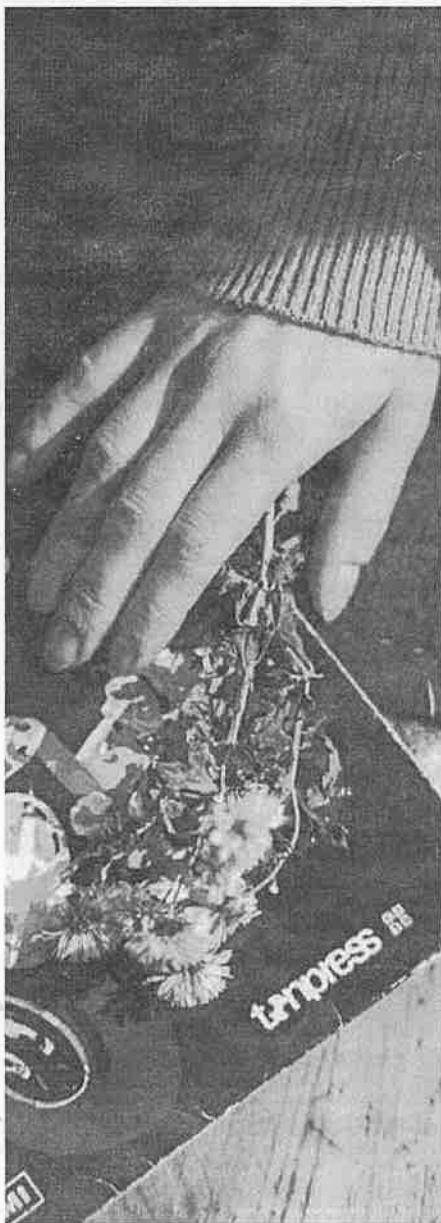
In the petition filed by Ria for maintenance of both the children against Eric. The Court is of the following opinion:

The suit for maintenance is dismissed as the claim is baseless as there exists no relationship between the parties hence, there exists no rights/obligations.

THE POST

THURSDAY

Ria Surrogacy Case: An Order Taking the Nation Backwards?



The order passed by the Metropolitan Magistrate of Genovia has stirred conversations, sparked discussions and debates regarding the Surrogacy (Regulation) Act, 2021 and the rules set in place to regulate the ART clinics that are authorized to conduct procedures enabling surrogacy. Did the Act do good for the industry? Can some clauses be changed?

A team from Wano Law University (WLU) undertook a study of legal aspects of the Act as part of a government funded research. The study found that there were aspects of the Act that could be misused and it gave rise to a plethora of legal and ethical issues. The doctors covered in the study felt that a large number of people were coming to Wano to avail the facility of surrogacy adding to the medical tourism. Moreover, research and development in the field can be hindered due to the same reason. "the Bill does not recognise singles or those who are unmarried, including those who are a part of the LGBTQA+ Community", said a researcher.

In a contrasting plea on 2nd May, 2022, a childless mother has taken the internet by a storm with her plea "Who will bear my husband's baby?"

The decision of how the Act protects all classes of people in regards to the process of surrogacy has to be a mindful one.

International Custody Battles

As a part of another research in the same series, a WLU team conducted research and studied rulings of the Supreme Courts and various High Courts and Lower Courts on legal custody battles in a paper "Cross-border Child custody Disputes".

The study found that the return of the child to a foreign jurisdiction i.e., to the couple seeking the child was ordered in a disappointing 23% of cases. In 77% of the cases, custody was given to the mother.

The same can be seen in the order in the Ria Surrogacy Case that says there was no agreement to begin with as the essentials were not fulfilled. Hence, the surrogate mother had to continue the care of the children despite her weak financial standings. Does the aforementioned Act not stand to protect her?

“GROSS NEGLIGENCE AND IMPUDENCE DISPLAYED
BY THE PILLARS OF ONE OF THE NOBLEST
PROFESSIONS”: GENOVIAN METROPOLITAN
MAGISTRATE SLAMS ART CLINIC FOR THEIR
NEGLIGENCE AND MISCONDUCT IN RIA CASE

XX October, 2022: The Genovian Metropolitan Magistrate expressed his disappointment in the neglectful behaviour exhibited by ABC ART Clinic, due to their ineptitude in conforming with the legal regulations and standards laid down while providing its services to an innocent young woman in being a surrogate mother, without verifying her legal competence, or mental, and physical health.



The Court has further proceeded with reprimanding the State for its failure to prevent such exploitation of vulnerable women and has directed the Ministry of Health and Family Welfare, and the ICMR to immediately conduct an investigation across the State and terminate the licenses of all clinics indulged in such unethical and negligent practices.

“COURTS SHOULD NOT GRANT MAINTENANCE FOR BASELESS CLAIMS”: GENOVIAN FAMILY COURT DISMISSED MAINTENANCE CLAIM FOR SURROGATE MOTHER.



XX October 2022: The Genovian Metropolitan Magistrate on Monday dismissed a plea which sought for maintenance filed by surrogate mother in the controversial Ria Surrogacy case.

The court dismissed the petition as there existed no relationship between the parties. The court also observed that none of the conditions required to be a surrogate mother was fulfilled and there was no agreement between the parties. “Laws are to be followed. A person cannot come to the court seeking for relief without abiding the laws in the first place. “Ignorance of law cannot be excused”.

The court directed the state health department to set up a special board to implement the provisions of the Surrogacy Act in order to curb the issues of illegal surrogacy. The provisions and procedures must be streamlined, thereby regulating the methods and conditions for the process of surrogacy. Flexible rules allow potential parents to control over other women’s bodies and the same can lead to widespread unethical medical practices. This is one of the main reasons why commercial surrogacy is banned in the country. The court opined that it cannot grant the relief sought in the case and it strictly ordered the commission to conduct an enquiry on the issues relating to illegal surrogacies and invalid surrogacy contracts.

In an earlier plea filed by an advocate pointing out the inconsistencies of the ART Act and Surrogacy Act it was observed that the surrogacy industry in India is estimated to be growing at USD 445 million per year. The Act criminalizes anyone who chooses surrogacy apart from the categories specified under the law. Procedures that are inconsistent with the Act will only lead to more complex issues and courts will not be able to enforce the same.