



CMA.(MD)No.1148 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/08/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No.1148 of 2023

and

CMP (MD) No.15447 of 2023

1.K.S.Ramshankar
2.Sivaramraja
2.Suganthi

: Appellants/Respondents/
Respondents
Vs.

G.Preethi

: Respondent/Petitioner/
Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under Section 47 of Guardians and Wards Act, 1890, to set aside the fair and decreetal order passed in IA No.1 of 2022 in GWOP No.465 of 2022, dated 15/09/2023 on the file of the Principal District and Sessions Court, Virudhunagar at Srivilliputhur.

For Appellants : Mr.K.Sudalaiyandi

For Respondent : Mr.A.S.Vaigunth

JUDGMENT

This Civil Miscellaneous Appeal is filed against the fair and decreetal order passed in IA No.1 of 2022 in GWOP No.465 of 2022, dated 15/09/2023 by the Principal District and Sessions Judge, Virudhunagar.



2. The facts in brief:-

GWOP No.465 of 2022 was filed by the respondent herein under sections 7(1)(a), 8 and 25 of the Guardian and Wards Act, with the following averments:-

The first appellant herein is her husband. Their marriage was performed on 23/05/2021 in Rajapalayam as per their customary rites. Two childrens were born to them out of the wedlock. The first children was born on 09/09/2012 by name R.Shradhadha. Second children was born on 04/02/2018 by name K.R.Sahidh. The first children is studying 6th standard in Chinmaya Vidyalaya School at Rajapalayam. Second children in Prashada Pradasala at Rajapalayam. Both are in the care and custody of the respondents 2 and 3.

3.After the marriage, the petitioner and the respondents are living in Ariyalur. During that time, she was treated cruelly and the first respondent never take any care of the family affairs. He was also spreading false news against the petitioner. On 29/05/2022, the petitioner was driven out of the house by the first respondent by separating the childrens. Now the childrens are in the custody of the respondents 2 and 3. He gave a false complaint against the petitioner before



CMA.(MD)No.1148 of 2023

the Superintendent of Police, Rajapalayam. During the police enquiry, the childrens were taken by him. In spite of repeated request and panchayat, the first respondent has not come forward either for reunion or restoring their childrens to their custody. He filed HMOP No.85 of 2022 before the Sub Court, Srivilliputhur seeking judicial separation.

4.The first respondent is working as Senior Manager in Ramco Cements, Ariyalur. So, he is having no time to take care of the childrens. In spite of the above said job nature, he wanted to retain the custody of the childrens. Welfare is the paramount consideration. That must be kept in the custody of her. So that, he can take care, look after their affairs and bring them in a proper manner. So, the petition filed seeking the relief.

5.Counter was filed by the respondents in the main petition repudiating the averments made in the petition. It is the counter allegation that the respondent herein is a short tempered and used to pick up quarrel unnecessarily, used to insult and scold the parents of the first respondent. In-spite of that, he was taking proper care and welfare of the family, she was frequently picking up quarrel after the birth of the childrens. With



WEB COPY



CMA.(MD)No.1148 of 2023

his parents used to threaten that she will commit suicide. Because of the job nature, he used to return to the house some-time in the mid night also. Without properly realizing the situation, she used to pick up quarrel. She voluntarily left the matrimonial home in the month of October 2021 by picking up quarrel by leaving the childrens in that house. After panchayat, she was taken to the matrimonial home. Again, she picked up quarrel on 25/05/2022 demanding property right in her favour which was standing in the name of the first respondent's father. She attempted to commit suicide by taking chemicals. Later, she left the matrimonial home by leaving the childrens in the parental home. Only thereafter, he filed HMOP No.85 of 2022 before the Sub Court, Rajapalayam. Now with the help of the 3rd respondent, he is taking care of the childrens, she lodged a complaint before the Rajapalayam Police Station. But the police advised her to get remedy from the Court. Since the welfare of the childrens are the prime consideration, the petition filed by the petitioner must be dismissed.

6.Pending proceedings, IA No.1 of 2022 was filed seeking interim visitation right and custody for two hours daily and full day during week end days namely Saturday and Sunday.



WEB COPY

7. In that petition, the Court found that the husband is not taking care of the children, but the childrens are in the custody of his parents. Since the petition is filed seeking only visiting right custody during week end, it was allowed with condition that the first respondent was directed to take the children to the wife on the first and third week of Saturday. Childrens must be given custody of the wife at 10.00 am and pick up them at 06.00 pm on Sunday. Drop at 06.00 pm in the house of the husband.

8. The wife as stated above is a short tempered. She was affected physiologically in 2015 to 2016. After taking treatment, there was some improvement, but after the birth of the childrens, she again went into the psychological issue. But refused to take treatment. Such being the mental condition of the wife, if the childrens are left in her custody, it will affect their future.

9. Against which, this appeal is preferred.

10. Heard both sides.

11. The learned counsel appearing for the appellant would submit that even though he is willing to take the childrens to the house of the wife, but the childrens are



WEB COPY



CMA.(MD)No.1148 of 2023

very afraid and not interested in going to the custody of the wife. Enquiry conducted by the trial court with the childrens also did not improve their willingness. So, if the childrens are taken to the custody of the wife, then their future will be affected. They also physiologically face some problem.

12.But that sort of objection cannot be taken into account at all. Only for two days in the first and third week of every month, the visitation right has been given. Without proper reason and on mere apprehension, it appears that this objection has been raised by the appellants herein.

13.Perusal of the main petition and counter filed by the appellants herein shows that there was no big problem between them. The main reason for the separation, according to the appellants is that short tempered nature of the wife. He has stated that she was affected by psychological and was taking treatment also. When that is being so, if the custody of the childrens is not given for those days, as ordered by the trial court, her problem will escalate causing health problem also. Preventing the childrens from visiting their mother may not only affect the relationship between the husband and wife, but also the relationship between the childrens and the mother.



WEB COPY



CMA.(MD)No.1148 of 2023

14.Considering the age of the childrens, I am of the considered view that the apprehension made by the appellants that childrens may not be interest in visiting the mother may not be proper. It appears that the appellants wants to avoid the custody of the children even for some-time. So this sort of attitude cannot be encouraged. On that account, I find absolutely no reason to entertain this appeal.

15.In the result, this Civil Miscellaneous Appeal is **dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

02/08/2024

Index:Yes/No
Internet:Yes/No
er

To,

- 1.The Principal District and Sessions Judge,
virudhunagar District @ Srivilliputur.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA.(MD)No.1148 of 2023

G.ILANGOVAN, J

er

CMA (MD) No.1148 of 2023

02/08/2024