

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2015
DATE OF DECISION : 14.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.A.No.355 of 2015

Dr.Muthian Sivathanu ... Appellant/Petitioner

Vs

1. The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Director of School Education,
Tamil Nadu,
DPI Campus, College Road,
Chennai-600 006.
3. The Principal,
D.A.V. Matric Higher Secondary School,
Block No.12, J.J. Nagar,
Mogappair East,
Chennai-600 037.
4. Nalini Muthian

सत्यमेव जयते... Respondents/Respondents

The Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 20.02.2015 passed in W.P.No.4336 of 2015.

W.P.No.4336 of 2015 : Petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents one to three to take action on the final notice dt.10.1.2015 of the petitioner and to cancel the illegal surreptitious admission given by the third respondent school to child

M.Subhalakshmi, Std III B, Admission No.3214 in conspiracy with the fourth respondent Kidnapper and mother of the child so as to enable the continuance of the child's education in the previous school viz.St. Johns Matric Hr.Sec.School Baba Nagar Chennai 49 in order to protect the interests and reasonable well-being of the child.

For Appellant : Mr.M.Sivathanu

For respondents : Mr.K.Karthikeyan,
Government Advocate for RR1 to 3
Mr.V.Lakshmi Narayanan
for Mr.V.Raghavachari for R-4

JUDGMENT

SATISH K. AGNIHOTRI, J.

The appellant, being the husband of the fourth respondent, had preferred this appeal, questioning the legality of the order dated 20th February, 2015 passed in W.P.No.4336 of 2015.

2. The appellant preferred a writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus, directing the respondents 1 to 3 to take action on the final notice dated 10th January, 2015 and to cancel the illegal surreptitious admission given by the third respondent school to the child M.Subhalakshmi, Standard III-B, Admission No.3214 in conspiracy with the fourth respondent kidnapper and the mother of the child, so as to enable the continuance of the child's education in the previous school, namely, St. Johns Matric Higher Secondary school, Baba Nagar, Chennai-49 in order to protect the interest and reasonable well being of the child.

3. The learned Single Judge, having considered all aspects of the matter, particularly, the dispute between the husband and the wife, dismissed the writ petition, holding that the writ petition was filed with a sole attempt to vindicate his grievances against his wife. It was also noted with regret that the appellant is dragging the minor child in the legal battle between himself and his wife.

4. Thiru M.Sivathanu, learned counsel, who happens to be the father of the appellant and father-in-law of the fourth respondent, making a very strong obnoxious and pungent comment against his own daughter-in-law, would submit that the child, namely, M.Subhalakshmi, was in mental trauma for at least more than a month from 30.6.2011 to 2.8.2011, after she was allegedly kidnapped by her mother by shifting her school from St. Johns Matric Higher Secondary School, Baba Nagar,

Chennai to D.A.V. Matriculation Higher Secondary School, J.J.Nagar, Mogappair East, Chennai-37. It is further contended that by uprooting the child in the middle of the academic year when the child was studying in St. Johns Matric Higher Secondary School for more than four years, the child had lost her company of friends, teachers and also the proximity of her father and relatives. The further allegation was that shifting has been done in a surreptitious and clandestine manner with a malafide intention to cut-off the child's relationship with the father.

5. On the other hand, Thiru V.Lakshmi Narayanan, learned counsel for the fourth respondent would contend that the appellant is foisting cases on fourth respondent on account of her father-in-law, who is prompting the appellant to file cases. The father of the appellant disregarding the professional ethics, is appearing as an Advocate and creating all discards between the appellant and the fourth respondent. It was further contended that on account of the behaviour of the appellant's father, even the family life of the fourth respondent's brother-in-law was in doldrums and ultimately, her brother-in-law's wife was separated from him. The further contention of the learned counsel is that seemingly the prayer is against the official respondents, but the entire allegations are targeted against the fourth respondent for obtaining custody of the child. The Supreme Court vide order dated 21st August, 2013 in C.A.No.8230 of 2013 awarded a sum of Rs.80,000/- per month as maintenance for the fourth respondent and he daughter M.Subhalakshmi. However the same was reduced to Rs.5000/- by the appellant himself. Thus, the appellant is a wilful non-compliant and disobedient of the court's order. The girl child was admitted to St. Johns Matric Higher Secondary School at Babanagar. The fourth respondent is residing at Padi. The distance between her residence and the school is more than 6 Kms. Now, the distance is less than a kilometre, as the maximum distance fixed by the Central Board of Secondary Education is three kilometres for the children of her age.

6. The learned Single Judge had examined the factual disputes at length. It was found that the fourth respondent obtained the custody of the minor child Subhalakshmi by an order dated 4th December, 2011 passed by the I Additional Family Court in G.W.O.P.No.2177 of 2011. Thereafter, the appellant moved the court by way of an interlocutory application in I.A.No.3121 of 2014 to condone the delay in filing an application to set aside the ex parte order. The appellant has also filed an another interlocutory application, being I.A.No.1543 of 2014 for a direction to the fourth respondent to continue the education of the child in the same school, i.e., St. Johns Matric Higher Secondary School, Babanagar.

7. The learned I Additional Family Court, Chennai allowed I.A.No.1543 of 2014 ex parte, recording the absence of the fourth respondent. The appellant filed a contempt petition in the High Court, being contempt petition No.3336 of 2014, seeking punishment against the fourth respondent for wilful deliberate disobedience of the order dated 20th August, 2014 passed by the I Additional Family Court, as aforesaid. A division bench of this court, by order dated 23rd December, 2014, while dismissing the contempt petition, held as under :

"4.Copies of the relevant school records including the receipt for the payment of fees in the D.A.V. Matriculation Higher Secondary School and the student's profile have also been produced. Upon perusing the said documents, we are convinced that the girl child M.Subhalakshmi, born on 03.06.2007, had been admitted in Class III, Section B of the D.A.V. School much earlier than the order passed by the I Additional Judge, Family Court, Chennai, which is said to be violated.

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6.In view of the fact that the girl child M.Subhalakshmi had already been moved to another school earlier than the date of the passing of the order in I.A.No.1543 of 2014 in GWOP No.2177 of 2011, we are of the considered view that no act of contempt has been committed after the date of passing of the above said order.

7.In the light of the foregoing facts and circumstances, we deem it appropriate to close the contempt petition, as no case for proceeding against the respondent for contempt has been made out. However, the learned I Additional Judge, Family Court, Chennai is directed to dispose of the I.A.No.1859 of 2014, which was filed to set aside the ex-parte order dated 04.12.2011, within a period of four weeks from the date of receipt of a copy of this order."

8. In fact, in view of the aforesaid observation and the order passed by the division bench of this court, nothing survives for adjudication in the instant petition. The appellant has not kept quiet, but has filed a habeas corpus petition, being H.C.P.No.3175 of 2014 against the fourth respondent seeking a direction to the respondents to produce the alleged detainee, child M.Subhalakshmi, and

hand over to the petitioner /father, to continue her education in St. Johns Matriculation Higher Secondary School, Babanagar, Villivakkam, Chennai-49.

9. A division bench of this court, by order dated 14th November, 2014, dismissed the petition and held as under :

"13.Having gone through the material papers and the arguments advanced by both the learned counsel, we are of the considered view that the petitioner, who is the father of the minor girl is not entitled to seek the remedy of custody of the child, by way of this Habeas Corpus Petition, filed under Article 226 of the Constitution of India, by raising a plea of illegal detention of the child by the mother, since the child is in the custody of the mother."

10. The learned counsel for the appellant had referred several decisions, which was adverted to by the learned Single Judge at length.

11. We have considered the entire case from all angles. There is no dispute that the relief sought for in the writ petition is basically against the fourth respondent. However, the appellant has stated in his written submissions that the fourth respondent is only a formal respondent and no relief was claimed against the fourth respondent. We need not examine the facts, which have been settled after proper consideration by different courts at different stages.

12. Now the question arises is as to whether a direction can be issued to the first to third respondents to cancel the admission of the child M.Subhalakshmi in D.A.V. Matric Higher Secondary School and restore her admission in St. Johns Matric Higher Secondary school. The third respondent had not chosen to appear in this case.

13. Mr.K.Karthikeyan, learned counsel appearing for the official second respondent submits that the third respondent is a private school. The admission has been duly granted on request made by the mother of the child in the interest of the child. The transfer of the child from St. Johns Matric Higher Secondary school to the D.A.V. Matric Higher Secondary school had taken place long back.

14. As noted in the order dated 23rd December 2014 passed by the division bench of this court in the contempt petition No.3336 of 2014, no such direction to disturb the education of the child is required to be given at this stage. Further, the distance between the residence of the fourth respondent and the third respondent school is

less than one kilometre, when the distance from the said residence to the St Johns Matric Higher Secondary School is more than six kilometres. On this ground also, it is just and proper to continue the education of the child in the D.A.V. Matric Higher Secondary school, which is a reputed institution and also in accordance with the guideline laid down by the Central Board of Secondary Education.

15. On the basis of the letter dated 04th August, 2014 written to the father by the St. Johns Matriculation Higher Secondary School, wherein, it is stated that his daughter M.Subhalakshmi of III-A was not attending the school for the past many days and also thereafter, relying on a letter dated 07th November, 2014, whereunder it was reported that number of days present, out of 191 days, was 161.5 and number of days absence was 29.5, the appellant had made allegations of carelessness and trauma what the child is facing. The appellant has not produced any other material to indicate as to whether the absence was deliberate or on account of some other problem, i.e., may be sickness, a long distance or any other reason. Even otherwise, the absence in the school, particularly in Class III-A cannot be a ground to direct continuation of her schooling in St. Johns Matriculation Higher Secondary School, which is admittedly far away from the place of the residence of her mother and the convenience of the mother is also equally important in such a case, where the father is staying away and the mother has to take care of her child single-handedly. We are not going into other allegations and also the allegation of kidnapping of the child by her own mother.

16. No one can be more caring than the mother of the girl child. In the Mokshadharma Parva, Section CCLXVI, Bhishma says, "I shall now think upon (what is due to) the mother. Of this union of the five (primal) elements in me due to my birth as a human being, the mother is the (chief) cause as the firestick of fire. The mother is as the fire-stick with respect to the bodies of all men. She is the panacea for all kinds of calamities. The existence of the mother invests one with protection; the reverse deprives one of all protection. The man who, though divested of prosperity, enters his house, uttering the words, 'O mother!'--hath not to indulge in grief. Nor doth decrepitude ever assail him. A person whose mother exists, even if he happens to be possessed of sons and grandsons and even if he counts a hundred years, looks like a child of but two years of age. Able or disabled, lean or robust, the son is always protected by the mother. None else, according to the ordinance, is the son's protector. Then doth the son become old, then doth he become stricken with grief, then doth the world look empty in his eyes, when he becomes deprived of his mother. There is no shelter (protection against the sun) like the mother. There is no refuge like the mother. There is no defence

like the mother. There is no one so dear as the mother. For having borne him in her womb the mother is the son's Dhatri. " (Here, the son denotes the child irrespective of gender. The word "son" includes daughter).

17. The allegation of kidnapping, snatching away of her own child against the mother is painful and has to be avoided at any cost. The appellant, who is the father and contesting the case through his own father, has forgotten all basic sentiments of the mother. Thus, the allegation made by the appellant through his father, who is an Advocate, is unsubstantiated and baseless. We are not inclined to examine the various decisions referred and relied on by the appellant as the same are not relevant to the peculiar facts and circumstances of the case. Thus, we do not find any merit in this appeal.

18. Even otherwise, the appellant has failed to establish that any legal constitutional or other right of the appellant has been infringed by shifting the education of the child from the distant school to a nearby school at the instance of the mother. It is a vexatious litigation and is tantamount to flagrant misuse of the judicial process.

19. Before parting with the disposal of the case, we are constrained to make certain observations. The learned counsel for the appellant is the father of the appellant. Thus, there was all possibility to contest the case in a biased and partisan manner, not dispassionately as advised under the professional ethics. The learned counsel, being the father-in-law of the fourth respondent, has equal rather more responsibility towards the family of his son and his daughter-in-law. Accordingly, he is expected to reconcile the discards between the husband and wife. He should attempt to bring an amicable settlement in the interest of the child and also to save the mother, i.e., the fourth respondent and the child from being driven from one court to other, like a shuttlecock, to defend her right and her child's interest. The appellant had also not paid the maintenance allowance, as granted by the Supreme Court, regularly. We expect that the learned counsel, who is agitating the case of the appellant, albeit he is the father of the appellant and father-in-law of the fourth respondent, will initiate all endeavours to settle the family dispute in the larger interest of his son and daughter-in-law and their child.

20. Resultantly, we dismiss the writ appeal with costs quantified to be a sum of Rs.50,000/- (Rupees fifty five thousand only). This Court by order dated 12th March, 2015, has directed to

deposit a sum of Rs.24,000/- towards costs and expenses payable to the fourth respondent, which has also been withdrawn by the fourth respondent. Thus, remaining sum of Rs.26,000/- (Rupees twenty six thousand only) is payable to the fourth respondent within a period of two weeks from today.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Director of School Education,
Tamil Nadu,
DPI Campus, College Road,
Chennai-600 006.

+2cc's to Mr.V.Raghavachari, Advocate, S.R.No.30657 & 35376
+2cc's to Mr.N.Sivathanu, Advocate, S.R.No.35469
+1cc to the Government Pleader, S.R.No.25589

W.A.No.355 of 2015

CNR(CO)
CA(22/07/2015)

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