

Application No.7859 of 2014
in
Original Petition No.768 of 2013

R.SUBBIAH, J.,

This application is filed under Sections 3, 7 to 10 and Section 25 of the Guardian and Wards Act, 1890 r/w Order XXI Rules 2 & 3 of Original Side Rules, by the father of the minor child V.K.Ronnie 30.05.2012 as against his wife to grant permanent custody of the minor child V.K.Ronnie to the applicant/father and to direct the respondent/mother to hand over the custody of the minor child to the applicant/father.

2.Pending the Original Petition, the applicant/father has filed the above application (A.No.7859 of 2014), seeking to grant interim custody of the minor child, by directing the respondent/mother to deliver custody of the minor child during all Saturday, Sunday holidays and also during the days of celebrations in the family.

3. I have carefully heard the submissions made by the learned counsel appearing for the applicant/father and the learned counsel appearing for the respondent/mother and perused the materials available on record.

4.Since the present application has been filed only for interim custody of the minor child, I am not dealing with the other averments made in the original petition.

5.This application for interim custody of the minor child was opposed by the respondent/mother mainly on two grounds_

(i)minor child is aged about 2 ½ years only.

Under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the custody of the minor child, who was not completed the age of 5 years should be with the mother.

(ii)As per Section 25 of the Guardians and Wards Act, if a ward leaves or is removed from the custody of a guardian of his person, the Court if it is of the opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return. According to the respondent, in the instant case the custody of the minor child was always with the respondent/mother; at no point of time, the custody of the minor child was with the applicant/father so to say that the custody of the minor child was removed from the applicant/father. Therefore, the Original Petition itself is not maintainable, since the custody of the minor child who is below the age of 5 years should be with the mother only. Further, the averments made in the Original Petition do not satisfy the requirements under Section 25 of the Guardians and Wards Act. Thus, the respondent/mother sought for dismissal for the present application as well as the Original Petition.

6.It is the submission of the learned counsel appearing for the applicant/father that as a father of the minor child, the applicant herein is entitled to the interim custody of the minor child. While dealing with this kind of cases, the Court should approach the problem with human-touch; no hard and fast rule could be applied with regard to the entitlement for the custody of the minor child.

7.In this regard, a reference could be placed in the judgment reported in **(2008) 9 SCC 413 (Nil Ratan Kundu and another Vs. Abhijit Kundu)**, wherein it has been held as follow:-

“52. In our judgment, the law relating to custody of a child is fairly well-settled and it is this. In deciding a difficult and complex question as to custody of minor, a Court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising *parens patriae jurisdiction* and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored.

They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor.”

From a reading of the above judgment, it could be seen that while dealing with the custody of the minor child, the Court is neither bound by statutes or by strict rules. The paramount consideration should be the welfare and well being of the minor child. Therefore, the custody of the minor child has to be decided only on the basis of the facts and circumstances of each case.

8. So far as the present case is concerned, on two occasions, the case was posted in the Chamber i.e., on 26.03.2015 and 31.03.2015. On both occasions, the applicant/father as well as the respondent/mother, were present along with their respective counsel and the minor child was also produced. On seeing the applicant/father, the minor child V.K.Ronnie ran towards his father/applicant herein and hugged him affectionately. This Court was able to see that the minor child V.K.Ronnie was comfortable with his father/applicant herein. Therefore, in my considered opinion, there cannot be any impediment in giving the interim custody of the minor child to the applicant/father on every Saturday and Sunday till the main Original Petition is disposed of.

9. Hence, in view of the above, this Court directs the

respondent/mother to hand over the custody of the minor child V.K.Ronnie to the applicant/father on every Saturday at 10.30 am. The applicant/father is entitled to have the custody of the minor child V.K.Ronnie from 10.30 am on every Saturday till 5.00 pm of the next day i.e, on Sunday. The applicant/father shall hand over the custody of the minor child V.K.Ronnie to the respondent/mother at 5.00 pm on every Sunday. This arrangement shall continue till the disposal of the Original Petition.

This Application is ordered accordingly.

08.04.2015

SSV

R.SUBBIAH, J.,

(ssv)

Pre-delivery order
in

A.No.7859 of 2014
in
O.P.No.768 of 2013

08.04.2015