

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE M.S.K.JAISWAL**

C.M.A.No.959 of 2006

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JUDGMENT: (*Per Hon'ble Sri Justice G.Chandraiah*)

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This Civil Miscellaneous Appeal is directed against the order dated 23.01.2006 passed in G.W.O.P.No.589 of 2004, whereunder the learned Principal District Judge, Nalgonda, dismissed the said petition filed by the appellant/father.

Appellant is the natural father and the 1st respondent is the maternal grand-father of the minor child, namely, Ragipani Sai Tapan. The appellant filed the aforesaid G.W.O.P.No.589 of 2004 under Sections 7 to 10 of the Guardian and Wards Act, 1890, for appointing him as guardian of the minor child and grant custody of the minor child to him.

Brief facts of the case are as under:

The appellant married the daughter of the 1st respondent and they were blessed with a son namely Ragipani Sai Tapan. Subsequently, the wife of the appellant died on 05.01.1999 in a fire accident. In the said fire accident, the appellant also sustained burn injuries and that he took treatment for a long period in the hospital and during that period, the minor child was kept in the custody of the 1st respondent herein. After discharge from the hospital, the appellant requested the 1st respondent to handover the minor child, but the latter refused to do so. Thereafter, the 1st respondent filed M.C.No.3 of 2002 claiming maintenance to the minor child and that the learned Judicial Magistrate of First Class (Special Mobile Court), Nalgonda, directed the appellant to pay Rs.400/- per month towards maintenance of the minor child. The

appellant has got love and affection towards the minor child and he is ready to spend huge amount for his education.

The 1st respondent filed his counter-affidavit denying all the allegations and contended that the appellant is not entitled to the custody of the minor child as he has already married one Hemalatha and begot a female child through her. It is further contended that the minor's future will not be safe in the hands of the appellant as he has already killed his wife and he may cause harm to the minor child also. It is further contended that the appellant is not interested in the welfare of the minor child as he did not pay maintenance to the minor child in spite of the order passed by the learned Magistrate.

Before the trial Court, on behalf of the appellant, P.W.1 was examined and got marked Exs.A1 and A2. On behalf of the 1st respondent, R.Ws.1 and 2 were examined, but no documentary evidence was adduced. The trial Court, on consideration of the entire material available on record, dismissed the aforesaid O.P. holding that the welfare of the minor child would be safe and he will have a bright future if he is allowed to continue under the care and custody of the 1st respondent. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been preferred by the appellant/natural father.

Now the point that arises for consideration is whether the impugned order dated 23.01.2006 passed by the trial Court is sustainable and that the appellant/natural father is entitled to the custody of the minor child?

We have perused the order under appeal and other material available on record. From a perusal of the evidence of P.W.1 and R.Ws.1 and 2, it is abundantly clear that the appellant did not make any attempt to take the custody of his minor son

after the death of his wife till the date of filing of the aforesaid O.P. Further, the appellant contracted second marriage and begot a female child through his second wife. The minor son of the appellant is studying in English Medium School at Nalgonda, whereas the appellant is working in a small village where there is only High School. There are better educational facilities at the place of the 1st respondent than the place where the appellant is presently working.

In a case of this nature, the welfare of the minor child is the paramount consideration of this Court to decide the controversy. Therefore, we are of the opinion that the minor boy is to be kept under the care and custody of the 1st respondent/maternal grand-father so that he will have a bright future. A perusal of the impugned order would show that the trial Court elaborately dealt with all the aspects and rightly concluded that it is safe to keep the custody of the minor child in the custody of the 1st respondent/maternal grand-father instead of appellant, who is the natural father. The observations arrived at by the trial Court, which are clear and cogent, do not warrant any interference by this Court. Therefore, we do not find any illegality in the impugned order and as such, the appeal is liable to be dismissed.

The Civil Miscellaneous Appeal is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

G.CHANDRAIAH, J

M.S.K.JAISWAL, J

29.01.2015
Gsn