

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No. 2110 of 2015

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India against the order dated 08.04.2015 passed in I.A.No.191 of 2014 in F.C.O.P.No.44 of 2014 wherein the learned Judge, Family Court, Kurnool, dismissed the application filed by the petitioner herein under Sections 6 & 13 of the Guardians and Wards Act and Section 151 CPC for custody of her children.

The case of the petitioner is that the 1st respondent is her husband and out of their wedlock, they begot two male children. Thereafter, the 1st respondent filed F.C.O.P.No.44 of 2014 on the file of the Judge, Family Court, Kurnool, against her for divorce. The first son namely Siva Nagi Reddy, who is aged about 5 years, and the second son by name Gokul Reddy, who is aged 13 months, are in the custody of her parents-in-law. As the second son is a milk-suckling boy, he requires the personal attention of his mother. The first son being aged about 5 years is statutorily entitled to the guardianship of his mother. The parents-in-law of the petitioner are incapable of looking after the welfare of the children. It is alleged that when the petitioner went to Kattamanchi Ramalinga Reddy School where her first son is studying, the Management of the School did not give permission to see her first son though there are orders of the Court. It is also alleged that when the petitioner went to the house of the 1st respondent to see her second son, her parent-in-laws refused to show the boy to her. Hence, sought for custody of the children.

A counter is filed by the 1st respondent denying the allegations made in the petition. It is contended that the petitioner intentionally avoided mentioning in the counter as to the manner in which the second son came into custody of her parents-in-law. The petitioner eloped with the 2nd respondent neglecting the second son who was then suffering with serious skin disease and for the past more than eight months, the petitioner did not evince any interest at least to see that child. The parents-in-law of the petitioner are very much capable of looking after the welfare and needs of the children. The first son is studying in a residential school and the petitioner was permitted to see that boy twice a month as per the orders of the Court made in I.A.No.167 of 2014. Therefore, sought for dismissal of the petition.

Sri J. Janaki Rami Reddy, learned counsel for the petitioner, submits that since the children, whose custody is sought, are minors, especially, the second son is only a milk-suckling boy, the mother is entitled for custody, as per the provisions of the Hindu Minority and Guardianship Act. He further submits that the love and affection of the mother at the tender age of the minor children is required and normally the custody of the minor children should be with the mother. He also submits that when the allegations, which were leveled against the petitioner only for the purpose of obtaining a decree of divorce, are to be proved in the O.P., that cannot be a ground to refuse custody of the minor children to the petitioner. In support of the same, the learned counsel relied on a judgment of the Delhi High Court in **Smt. Chander Prabha Vs. Prem Nath Kapur** and also a judgment of the Apex Court in **Roxann Sharma Vs. Arun Sharma**.

On the other hand, Sri K. Rathangapani Reddy, learned counsel for the 1st respondent, submits that after waiting for eight months the petitioner filed the present petition and that the trial Court, after taking into consideration the factors and also the welfare of the minor children, found that the petitioner is not entitled for custody of the minor children. He further submits that the father is presumed by the statutes to be better suited to look after the welfare of the child being normally the working member and head of the family. In support of the same, he relied on a judgment of the Apex Court in **Mausami Moitra Ganguli Vs. Jayant Ganguli**.

In this case, it is to be seen that the trial Court after observing the minor children found as follows:

"It is true on account of the age of the minor boy he needs mother's care but factual position is that he was under the care and custody of his grand parents and his father nearly 14 months. On observation by this Court he is comfortable in the custody of his grand parents. Minor felt reluctant to some extent when he was placed in the company of her mother (i.e., petitioner herein) which is quite natural as he met with his mother after long gap. Further grand parents of the minor boy stated that he needs medical care with regard to skin disease and on coming season there will be impact on the skin of the minor boy. They further stated that they also mentioned the same in the main FCOP. However they did not file any medical evidence or choose to get examine Dermatologist to substantiate the same. They further stated that petitioner has no financial capacity to meet the expenditure for medicines. But mere not having financial capacity is not a bar to the mother to have the custody of the minor boy. It is true mother would have priority over the above said persons but welfare of the child is only the paramount consideration to decide the custody. Health of the minor boy cannot be put into stake by sudden handing over the minor boy only on the aspect that mother is after

all a mother even after having knowledge of admitted fact that he was away from his mother for a long period of 14 months. As such after entire observation, I feel the custody of the petitioner with his grand parents and his father is more better than the petitioner till the disposal of the main case."

This Court has also called for appearance of the petitioner, the 1st respondent and the minor children. This Court held in-camera enquiry, and after hearing the petitioner, the 1st respondent and his parents in person and observing the mental status and the attitude of the children, feels that the observations of the Court below are true. As per the judgments cited by the learned counsel for the petitioner, normally the custody of the minor children should be granted to the mother only, but as per the judgment of the Apex Court relied on by the learned counsel for the 1st respondent, this Court has to consider the welfare of the minor children as paramount consideration while granting custody of the children. The trial Court has also observed the views of the first son while dismissing the petition. However, the Court below has made a provision for the petitioner to meet her children every Sunday. In view of the same, I do not see any ground to interfere with the order under challenge by exercising the power under Article 227 of the Constitution of India.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed.

A. RAJASHEKER REDDY, J.

28th August, 2015

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C.R.P.No.2110 of 2015

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