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

CIVIL MISCELLANEOUS APPEAL No. 339 OF 2006

DATED 6TH MARCH, 2015.

BETWEEN

Bahadurshah Rama Bai

…Appellant

And

Sankara Srinivasa Ramakrishna

…Respondent.

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

CIVIL MISCELLANEOUS APPEAL No. 339 OF 2006

ORDER: (per HON'BLE SRI JUSTICE G. CHANDRAIAH)

This appeal is directed against the judgment and decree dated 16.03.2006 passed in O.P.No.165 of 2001 by the learned III Additional District Judge, Kakinada.

The appellant herein filed the aforesaid O.P. under Sections 7 and 17 of the Guardians and Wards Act seeking to appoint her as guardian of the minor boy by name Sunkara Venkata Jayaram. The Court below, however dismissed the said OP through the judgment under appeal considering the welfare of the minor boy with the respondent and observing that as the minor boy developed love and affection towards his father/respondent

herein, and in the event of the appellant is appointed as guardian, it may not be possible to change his attitude and temperament to suit the family members of the appellant.

Aggrieved by the said judgment and decree, the appellant preferred this appeal.

On an earlier occasion, the appellant filed a miscellaneous petition being CMAMP.No.502 of 2008 seeking a direction to permit her to visit her grand-son on weekdays and take him to her company and return to the custody of the respondent once in a week. This Court by order dated 09.06.2008 dismissed the said petition observing that subsequent to the death of the mother of the minor boy in an accident, the appellant has not made an attempt all along to make a visit of the minor boy and that since the very OP has been dismissed by the Court below on merits, the issue needs to be adjudicated in the appeal.

We have heard the learned Counsel for the appellant and learned Counsel for the respondent. Perused the judgment under appeal and other material available on record.

It is pertinent to see that now the age of the appellant is about 75 years and at this stage of her age, and considering the paramount welfare of the minor boy in all respects and his affection towards his father-respondent and paternal grand father, it is not at all feasible and appropriate to appoint her as guardian of the minor boy in the event of her succeeding the appeal. Further more, the minor boy has been living with the respondent for so many years and uprooting the custody and separating the child from the respondent-father and his maternal grand father at this

length of time, would certainly affect the education and mental condition of the child. Paramount welfare of the child depends on many factors, such as, means to bring up the child, socio economic condition and it also includes the conduct and character of the person, claiming guardianship, who has to raise the child, till he or she attains majority. The Court should take into consideration all relevant factors that are required for deciding the custody and guardianship. Just because, one of the contenders is affluent than the other, but does not possess moral standards, which is expected of, custody and guardianship of the child cannot simply be entrusted ignoring the paramount welfare of the child. In these lines, the Court below adjudicated the subject matter of issue in proper perspective and dismissed the OP rightly. We do not see any reasonable and justifiable grounds warranting interference with the judgment under appeal.

Having regard to the same, the Civil Miscellaneous Appeal is liable to be dismissed.

As far as the visiting rights are concerned, the learned Counsel for the appellant is not in a position to appraise this Court as to survival of the appellant as of now. However, having regard to the age of the appellant is concerned, it is just and reasonable to grant her visitation rights so as to make a visit of the minor boy-Sunkara Venkata Jayaram. Accordingly the appellant is at liberty to make a visit of the minor boy-Sunkara Venkata Jayaram once in a month, i.e. on any Sunday in a month between 9.30 AM and 5.30 PM by informing in advance the respondent herein.

Subject to the above observation and direction, the Civil Miscellaneous Appeal is dismissed.

Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.

JUSTICE G. CHANDRAIAH

JUSTICE M.S.K. JAISWAL

DATED 6TH MARCH, 2015.
Msnrx