

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.06.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1065 of 2016

Murthy

... Appellant/Petitioner

Vs.

1.Chinnammal
2.Udhayakumar
3.Malarkannan

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act, to set aside the fair and decretal order dated 06.01.2016 passed in G.O.P.No.76/2012 on the file of the Principal District Judge, Villupuram & District.

For Appellant : Mr.I.C.Vasudevan

For Respondents : No Appearance - R1

R2 & R3 Refused.

JUDGMENT

Impugning the fair and decretal order dated 06.01.2016 and made in G.O.P.No.76 of 2012, this appeal has been filed by the appellant herein.

2. It is manifested from the records that the appellant, who is the petitioner herein in G.O.P.No.72 of 2012, has filed a petition under Section 25 of the Guardian and Wards Act r/w Section 6 of the Hindu Minority and Guardianship Act, as against the respondents 1 to 3 to appoint the petitioner as guardian for the minor as well as her property till she attains majority and directed the respondents to hand over the custody of the child to the petitioner through court.

3. Despite the contest made by the respondents, the learned Principal District Judge, Villupuram, had proceeded to dismiss the petition, on the ground that the first respondent being the maternal grand mother of the minor, would be at a great loss of her anticipated company with the minor which could be a solace in the absence of her daughter Mahalakshmi. Having been

aggrieved by the impugned order dated 06.01.2016, the appellant being the father of the minor child stands before this Court.

4. When the appeal is taken up for hearing, it is brought to the notice of this court that the respondents were duly served. However, they have not chosen to appear either in person or through their respective counsels. Hence they are called absent.

5. Heard Mr.R.C.Vasudevan, learned counsel appearing for the appellant.

6. This Court has perused the grounds of appeal and on considering the submission made by the learned counsel appearing for the appellant, this Court finds that the appeal could be disposed of, on merits in the absence of the respondents.

7. It is revealed from the averments of the petition that the marriage between the petitioner and first respondent's daughter viz., Mahalakshmi was solemnized on 13.06.2012 as per Hindu Shastras in the presence of elderly people. The appellant was then, working as a teacher at Muthakuruchi Village and they were residing at Madukur Village, Pattukottai Taluk. Out of their wedlock, the appellant's wife Mahalakshmi had delivered a female baby namely, Nirmala on 26.08.2004. In the meanwhile, the petitioner was transferred to Avalurpettai Village, Gingee Taluk. After nine months from the date of the birth of the child, the petitioner brought his wife to Tindivanam. According to the petitioner, his wife Mahalakshmi was persisting with her demand from the petitioner and she was also so very adamant and was persistently demanding for a separate family. On account of matrimonial tiff, the said Mahalakshmi had gone to extreme end of committing suicide by hanging on 05.07.2005. The second respondent had lodged a complaint against the petitioner and a case was registered under Section 306 of I.P.C., and after full pledged trial, the case was ultimately ended into acquittal.

8. The petitioner is the natural guardian of the minor child as per Hindu Law and legally the minor Nirmala should be under the care and custody of the petitioner. It is revealed that a false complaint lodged as against the petitioner by one of the respondents. The respondents had taken the child from the custody of the petitioner. Under these circumstances, the petitioner has chosen to file the above petition to appoint him as a guardian for his minor child as well as the property till she attains majority.

9. The respondents have also filed their counter statement

and in order to substantiate their claims, the parties to the petition were directed to face the enquiry and accordingly, the petitioner himself was examined as P.W.1. During the course of his examination, three documents were marked on the side of the petitioner. The second respondent Udayakumar was examined as RW1 and one document was marked on his side.

10. Based on the evidences available on record, the learned Principal District Judge, Villupuram, had dismissed the petition with the following observations:

- i)The respondents, so far keeping the minor Nirmala into their custody are permitted to have the custody until further orders.
- ii)The petitioner is entitled to have a visitation right to call on the minor girl on every 1st and 4th saturday of a month at the house of the respondents.
- iii)The respondents and their family members should not obstruct the right of visitation offered to the petitioner but to facilitate for such a meeting.
- iv)The petitioner and the respondents are equally entitled to bear the educational and maintenance expenses of the minor.

11. With regard to the examination of witnesses, Mr.I.C.Vasudevan, learned counsel for the appellant has argued that the petitioner was fully examined as P.W.1 and as such he intended to substantiate his case fully from his oral as well as the documentary evidence. But on the other hand, though RW1, who is second respondent herein had entered into witness box and tendered his evidence in chief, he had not appeared himself in person for the cross examination. The learned Trial Judge, without analysing the situation under which, the petitioner had filed the above said petition seeking custody of the minor girl, had gone on the wrong side and decided to dismiss the petition.

12. Mr.I.C.Vasudevan, learned counsel for the appellant has submitted that the petitioner had been working as a Head Master in a Government High School, Kallakurichi and having fully financial source to support his minor child and is also having financial source to put her to in a better school for the prosecution of her education. He has also submitted that the order of the Principal District Judge, Villupuram, seems to be perverted in nature and therefore, has urged to set aside the said order. Further, he has submitted that without analysing the facts and circumstances, the learned Principal District Judge had erroneously passed the above said order which deserves to be set aside.

13. Considering the submissions made by the learned counsel for the appellant and on perusing the impugned order and also having regard to all the related facts and circumstances, this court is of the considered view that without appreciation of the evidences and without considering the position of the petitioner being the natural guardian of the minor girl, the learned District Judge, Villupuram had passed the order dated 06.01.2010 in G.O.P.No.76 of 2012 which is liable to be set aside.

14. Accordingly the impugned order is set aside and the petition is allowed as prayed for. The petitioner has appointed as the guardian for the minor as well as her property till she attains majority. The first respondent herein, is also directed to hand over the custody of the minor child with the petitioner within a period of one week from the date of receipt of a copy of this order. The first respondent being the grandmother and other respondents being the brothers of the deceased are permitted to visit the minor child at the residential place of the petitioner as and when they decide to see the child.

15. In view of the above observation, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Kkd

To
The Principal District Judge,
Villupuram.

1 cc to M/s.I.C.Vasudevan, Advocate, sr.34579

C.M.A.No.1065 of 2016

ug co
kra 06.10.2016