

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.740 of 2016
and
CMP No.5994 of 2016

S.Nithya

... Appellant

vs.

S.R.Kumarashanmugam

... Respondent

Civil Miscellaneous Appeal filed under Section 47 of Guardians and Wards Act, 1890 against the order and decretal order dated 3.2.2016 made in I.A.No.24 of 2014 in GWOP No.13 of 2010 on the file of the Family Court, Erode.

For Appellant : Mr.K.Kannan
For Respondent : Mr.S.Chandrasekharan

JUDGMENT

The petitioner who is the mother of the girl child, viz., Sashmitha, has filed the present Civil Miscellaneous Petition challenging the impugned decretal order passed by the learned Family Court, Erode in I.A.No.24 of 2014 in GWOP No.13 of 2010 dated 3.2.2016, in and by which the grand parents of the girl child, has been given custody of child as given below:-

During quarterly examination holidays	..	2 days
During half yearly examination holidays	..	4 days
During summer holidays	..	6 days

2. The respondent is the father in law of the petitioner. The petitioner married the son of respondent on 6.3.2006 and out of wedlock, the girl child - Sashmitha was born on 10.1.2007. Unfortunately, the respondent's son who is the petitioner's husband and father of the girl child, died in a road accident on 7.3.2007. Subsequently, the petitioner contracted second marriage. Therefore, the respondent filed GWOP No.13 of 2010 for custody of the girl child, and the same was disposed of by order dated 21.12.2012 giving visitation right to the respondent and his wife. As no specific date was mentioned in the said order, the present Interlocutory Application was filed by the respondent herein and the same was ordered as stated above.

Aggrieved by the same, the present, Civil Miscellaneous Appeal is filed by the petitioner, mother of the girl child.

3. It is submitted by the learned counsel for the petitioner that the petitioner is residing at Chennai and as such, the girl child is with her mother at Chennai and she is not willing to stay with her grand parents who are residing at Erode as directed by the impugned order of the Family Court and the petitioner has no objection for visiting the child by the respondent and his wife, namely, the grand parents, and therefore, he prayed that the impugned order may be set aside. It is also brought to the notice of this Court that on the earlier occasion, parties and the girl child, were summoned and heard them.

4. It seen from the record of court proceedings dated 11.7.2016 that the girl child is not willing to stay with her grand parents. On 11.7.2016, this Court passed an order which reads as follows:-

"As directed by this Court, both the parties to the appeal along with the girl child, Sashmitha, appeared in person. This Court has enquired with the respondent, being the parents of the formerly husband of the respondent/petitioner and this Court has also interacted with the child. But, the child is not willing to move with her grand mother and grand father as well as to stay with them. Hence, post the matter on 12.8.2016."

5. In view of the above facts, this Court cannot force the child to stay with her grand parents and even if the child is compelled to go and stay with her parents as directed by the impugned order, the grand parents will not enjoy the custody of the child. Since the interest of the child is paramount, this Court is unable to sustain the impugned order. Therefore, the impugned order dated 3.2.2016 passed in I.A.No.24 of 2014 is set aside and the Civil Miscellaneous Appeal is allowed. However, the original order passed by the Family Court granting unlimited visitation right to the grand parents of the girl child in GWOP No.13 of 2010 dated 21.12.2012 is confirmed. No order as to costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

asvm

To

The Family Court, Erode.

1 cc to Mr.S. Chandrasekaran, Advocate SR.60756
+ 1 cc to Mr.K. Kannan, Advocate Sr.60915

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TRM(CO)
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