



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2583 of 2016 (PD)
& C.M.P. (MD) No.12186 of 2016

WEB COPY

Mrs.Hepas Helen, W/o.Joesph Benedict

.. Petitioner/
Repondent/Respondent.

Vs.

A.Thinesh

..Respondent/ petitioner/
petitioner.

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 24.09.2016, made in I.A.No.290 of 2015 in G.W.O.P.No.88 of 2014, on the file of the District Court, Kanyakumari District @ Nagercoil.

For Petitioner

: Mr.K.Kumaravel

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order, dated 24.09.2016, made in I.A.No.290 of 2015 in G.W.O.P.No.88 of 2014, on the file of the District Court, Kanyakumari District @ Nagercoil.

2. The petitioner is the sister of wife of the respondent and the respondent is the petitioner in G.W.O.P.No.88 of 2014 on the file of the District Court, Kanyakumari District @ Nagercoil.

3. The respondent filed the said G.W.O.P. for appointing and declaring him as guardian for the minor child with a direction to the petitioner to hand over the custody of the minor child namely, Abel Jovina to the respondent. The petitioner entered appearance in the G.W.O.P., but subsequently, she did not appear. Therefore, an ex-parte decree was passed on 27.02.2015, directing the petitioner to hand over the custody of the minor child, namely Abel Jovina to the respondent. The petitioner did not hand over the minor child to the respondent. Therefore, the respondent has filed I.A.No.290 of 2015 under Section 45(1) of Guardian and Wards Act, 1890 and Section 151 of C.P.C., seeking a direction to the petitioner to hand over the custody of the minor child, namely Abel Jovina to the respondent. The petitioner filed counter affidavit and opposed the said application and stated that the respondent ill-treated his wife and due to that, she died on 26.09.2013 and a case has been registered against him under Section 174 Cr.P.C. The respondent did not lead a happy married life with the petitioner's sister. The



petitioner is bringing the child with motherly affection, if the minor child is handed over to the respondent, the interest of the minor child will be affected. The petitioner stated that she filed I.A.No.125 of 2015 to set aside the ex-parte decree, dated 27.02.2015.

WEB COPY

4. The learned District Judge considering the averments made in the affidavit and the counter affidavit, directed the petitioner to produce the minor child, namely Abel Jovina before the Court.

5. Against the said order dated 24.09.2016, the petitioner has come out with the present Civil Revision Petition.

6. The learned counsel for the petitioner submitted that I.A.No.125 of 2015 to set aside the ex-parte decree was dismissed on 24.09.2016 on merits. On the same day, the learned District Judge erred in directing the petitioner to produce the minor child before the Court, for examination. The order of the learned District Judge directing the petitioner to produce the minor child before the Court is contrary to law.

7. I have heard the learned counsel for the petitioner and perused the materials on record.

8. From the impugned order dated 24.09.2016, it is seen that the learned District Judge has directed the petitioner to produce the minor child for examination of the child, as per statutory provision, to verify from the minor child about her intention to stay either with the petitioner or with the respondent. The petition in I.A.No.125 of 2015 to set aside the ex-parte decree had already been dismissed on 24.09.2016. Therefore, there is no error in the order passed by the learned District Judge directing the petitioner to produce the minor child before the Court. There is no irregularity or illegality in the said order warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

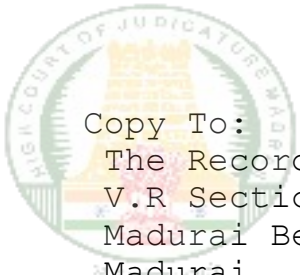
Sub Assistant Registrar

To

The District Judge,

<https://hcservices.ecourts.gov.in/hcservices/>

Ranyakumari District @ Nagercoil.



Copy To:
The Record Keeper
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

+1cc to Mr. K.Kumaravel, SR No 83291

smn2

ms/rr/me/23.01.2017/3p.4c

C.R.P. (MD) No.2583 of 2016 (PD)
& C.M.P. (MD) No.12186 of 2016
21.12.2016