

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1854 of 2014

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ORDER:

This revision petition under Article 226 of the Constitution of India by the unsuccessful petitioner/wife is directed against the order dated 01.04.2014 of the learned V Additional District Judge, Tirupathi of Chittoor District passed in I.A.no.1361 of 2013 in G.O.P.no.143 of 2013 filed by the wife under Section 12 of the Guardian and wards Act for giving interim custody of the minor child to her.

2. I have heard the submissions of the learned counsel for the petitioner/wife and the learned counsel for the respondent/husband. The parties shall hereinafter be referred to as 'the petitioner/wife' and 'the respondent/husband' for convenience and clarity. I have perused the material record.

3. The case of the petitioner/wife in support of her request, in brief, is this:

The respondent is her husband. After the marriage, they lived together at Kuppam. They both being physicians had shifted their practice to Hyderabad. Thereafter, in the year 2003, they started a hospital at Kodada of Nalgonda District. Under the lawful wedlock, the petitioner/wife has given birth to a male child on 12.05.2006. However, misunderstandings arose between the spouses. The respondent/husband started harassing the wife for additional dowry. In June, 2012, the respondent/husband had driven the petitioner/wife and her son from out of the house. Therefore, they had come down to Tirupati and started staying in the house of the sister of the petitioner/wife. However, on one day, the respondent/husband came to that house and took the minor child along with him with permission to have the custody of the child for one day; and, when the petitioner/wife asked for return of the custody of the child, the respondent/husband had replied that he had taken the child to Kodad. Thereafter, the respondent/husband did not show

the child to the petitioner/wife and concealed the whereabouts of the child. The father is unfit to have the custody of the minor child considering that the age of the child is seven years and as the child of such tender age requires motherly affection. Further, the respondent/husband is a busy orthopedic surgeon and he does not find time to look after the child. He had already kept the child in a hostel denying him the love and affection of both the parents. In spite of best efforts, the petitioner/wife could not make a visit to the place of the minor child. The child is crying to come out of the hostel. If the child is exposed to bad company, he would develop perverted behavior, which cannot be mended in future. The petitioner/wife being the mother will look after the welfare of the child, if the custody of the minor child is given to her. The respondent/husband cannot continue to have illegal custody of the minor child. The sister-in-law of the petitioner/wife committed suicide about 15 years back and her father-in-law also had committed suicide. With such family background of the respondent/husband, the petitioner/wife apprehends danger to the minor child in the hands of the respondent/husband and his family members. Hence, the present petition is filed seeking interim custody of the child.

4. On the other hand, the case of the respondent/husband, who is not disputing the marriage and paternity of the child, in brief, is this:

The material allegations in the affidavit of the petitioner/wife are false. He had alone started hospital at Kodad on 21.03.2003 under the name and style "Vasanthi Ortho Care Hospital". The hospital had gained reputation as one of the best orthopedic hospitals in the town. When the practice is flourishing, there was tremendous change in the attitude of the petitioner/wife. She had started sending money to her parents secretly without the knowledge and consent of the respondent/husband and she began to lead lavish style of life by purchasing unnecessary articles. The respondent/husband admonished her. Further, the petitioner/wife used to scold the respondent/husband in filthy language. Having taken initiative to encourage the petitioner to study post graduate course in anesthesia, the respondent/husband spent more than Rs.30 lakhs having obtained bank

loans. The petitioner/wife used to leave the house without his consent and used to stay along with her parents. The petitioner/wife was in the habit of going outside very frequently and had failed to take care of the basic needs of the child. She used to demand the respondent/husband to get food from outside and used to leave the minor child under the care of the servants. Thus, the petitioner/wife never acted like a responsible mother and she used to beat and scold the child on very trivial matters and she eventually became a nightmare to the child. Thus, the child suffered both physically and mentally at the hands of the petitioner/wife. On 12.06.2012, the petitioner had left the house leaving the respondent/husband and the minor child; and, she went away along with gold and cash to her sister's house at Tirupati. When the petitioner/wife, her mother, her sister and sister's husband tried to forcibly occupy his hospital, the respondent/husband had filed O.S.no.102 of 2012 on the file of the Court of the learned Junior Civil Judge, Kodada for perpetual injunction. Subsequently, notices were exchanged and a criminal case was also filed by the petitioner/wife against the respondent/husband under Section 138 of the Negotiable Instruments Act. The petitioner/wife along with her family members tried to kidnap the minor child on 09.08.2012 when the child was returning from SRM International School in bus no.5. But the driver of the bus and security persons resisted the said attempt and did not allow the child to be abducted. On that, the respondent/husband gave a police complaint in Kodad Police Station on 01.09.2012. As no action was taken, W.P.no.31908 of 2012 was filed before this Court. On the orders passed in the said writ petition, a case was registered by the police. Subsequently, a criminal case under Sections 498-A, 380 and 506 IPC was filed by the petitioner against the respondent/husband, his brother and parents. The respondent/husband had filed CrI.M.P.No.7366 of 2012 and had obtained interim stay. Later, they were all enlarged on bail. The petitioner/wife gave birth to the child while she was pursuing post-graduate course. When she had expressed inconvenience to bring up the child aged nine months, the child was kept under the care and custody of the paternal grand mother at Tirupati at her request. The mother of the respondent/husband brought the minor child till the child had attained the age of two years. Later, the child

was brought to Kodad. Even at that time, the petitioner/wife failed to look after the minor child and used to entrust the child to a servant maid. The minor son is happily staying with the respondent/husband and he is taking utmost care of the boy and the boy is doing well in his education. The petitioner/wife, who is interested in financial matters is blackmailing the respondent/husband that she would kidnap the minor child as she very well knows that the minor child is attached to his father, the respondent. After discussions, the respondent got the minor child admitted in a private world class school by paying Rs.2,40,000/- as fee and Rs.1,50,000/- as incidental charges to provide good education. Being afraid that the boy would be kidnapped, the respondent/husband is not in a position to disclose the name of the school. The respondent/husband apprehends danger and that the boy may be kidnapped, if the Court directs the respondent to produce the child. The petitioner/wife had left the child twenty months prior to the instant application seeking interim custody and during that period; she never enquired about the welfare of the child. As per the provision of the Section 6 of the Hindu Minority and Guardianship Act, 1956, the father is the natural guardian on the minor completing the age of five years. As the boy is now seven years of age and as he is happily living under the care and custody of the father and as the father/respondent is taking good care of the boy and providing him the best education by getting him admitted in a world class school, the petition is liable for dismissal. The petitioner/wife is not living at Tirupati and the trial Court is not having jurisdiction to entertain the petition. The petition is filed to damage the reputation of the respondent/ husband.

5. At the time of enquiry before the trial Court, no oral and documentary evidence was adduced. On merits and by the order impugned, the trial Court had dismissed the petition of the petitioner/wife. Therefore, the aggrieved petitioner/wife had preferred this revision.

6. Learned counsel for the petitioner/wife while reiterating the case pleaded by the wife, which is extracted supra, would submit as follows:

The respondent/husband is not taking personal care of the minor child.

Admittedly, he had kept the child in a hostel and he is not disclosing the name of the school in which the child was admitted. The respondent is not even inclined to state the whereabouts of the child. The petitioner/wife being a mother cannot be deprived of her right to have the custody of the child. As per the settled law, the mere investment of huge amount for the minor child by one of the spouses does not mean that the said spouse can take better care of the child. The child is about eight years of age and therefore, he requires motherly affection and it is advisable to keep the child under the care and custody of the mother during his tender years. The Court below ought not to have relied upon the words uttered by the child at the time of personal examination as the children have a tendency to make a parrot like repetition of the words which they are tutored to utter. The trial Court ought to have seen that the words uttered by the child are tutored words and therefore, basing on the words of the child uttered at the time of his examination, the trial Court ought not to have dismissed the petition of the petitioner who is the mother of the minor child. The trial Court ought to have seen that no mother would harm the interests of her own child and that the mother will always take best care of her own children, more particularly in Indian households. The trial Court erred in depriving the petitioner of her right to have the interim custody of the child. The trial Court did not even give visitation rights.

7. On the other hand, the learned counsel for the respondent/husband while reiterating the defence of the husband, which is stated supra, had supported the orders of the Court below. He laid emphasis on the observations in the orders of the Court below, which are based on the opinion arrived at by the learned Judge after the personal examination of the parties and the child.

8. The petitioner/wife is seeking interim custody of the child who was about seven years of age by the time the application was filed in the year 2013. The boy is admittedly in the custody of the respondent/father. According to the submissions of the respondent, he has admitted the boy in a world class school and is providing best available education to the boy.

Whatever may be the reasons, the disputes between the spouses had led to the estrangement. In cases of custody of child, the welfare of the child is only of paramount importance. Therefore, the endeavor of the Court must be to see the best interests of the child and determine as to how best the welfare of the minor child can be ensured. Perhaps, keeping in view the fact that the Court must make an effort in that direction, the trial Court had examined the petitioner/wife and the respondent/husband separately and also together in the chambers of the Court and also the boy after giving a direction to the respondent/husband to produce the boy before the Court. A perusal of the order of the Court below would disclose that on the production of the boy/minor child by the respondent, the learned Judge of the Court below had examined the boy in his chambers in a friendly and amiable atmosphere to find out the mind of the boy and it appears that during such examination of the boy by the learned Judge, the boy had bluntly stated that he is very much happy and comfortable with his father and that he is afraid to go with his mother. It is evident from the order that after spending some time with the child, the learned Judge had called the petitioner/wife and the respondent/husband into his chambers, while the child was in the chambers of the learned Judge and that when the parents were then called into chambers, the boy had hugged the father/respondent and that the boy and the father had burst into tears instantaneously and that seeing their plight, the mother had also burst into tears. It is also evident from the order of the Court below that at the mother's request, she was permitted to spend some time with the boy in the Court premises. Ultimately, keeping in view the welfare of the child, the Court below had considered that it just and proper to continuing the custody of the child with the father and that the said course would better serve the welfare of the child, which is of paramount importance. The Court below had, accordingly, dismissed the petition of the petitioner/wife.

9. Having carefully examined the facts and having gone through the order of the Court below, wherein valid reasons are assigned in support of the conclusions arrived at, this Court finds that the petitioner/wife has not made out valid and sufficient grounds warranting interference with the order

impugned.

10. Before parting with the case, it is appropriate to mention that the learned counsel for the petitioner/wife had also submitted that in case, this Court comes to the conclusion that the interim custody of the child cannot be given, certain directions regarding visitation rights may be given, in the interests of justice. In reply to the said alternative submission, the learned counsel for the respondent/husband had submitted as follows: 'In the case on hand, the boy is under the care and custody of the father/the respondent and that the father is taking good care of the boy and that the boy is studying in a world class school and is staying in the hostel and that any such request for granting visitation rights was not made before the trial Court on behalf of the petitioner/wife. The respondent apprehends that the child may be kidnapped if the custody of the boy is to be temporarily given to the petitioner during visitation rights, if any, to be granted to her.' I have given earnest consideration to the alternate submission made on behalf of the petitioner/wife. From the order of the Court below, it is not clear as to whether any alternative request was made before the trial Court for granting visitation rights to the petitioner. However, while dismissing the application of the petitioner/wife, no visitation rights are granted to the petitioner/wife by the trial Court. The details of the school in which the boy is pursuing his education are not borne out by the record. In the absence of such information, it is not possible to know the academic calendar of the school in which the boy is pursuing his education. Further, the OP is of the year 2013. Therefore, it is appropriate to observe that the petitioner/wife may make a request to the Court below to dispose of the OP on merits and in accordance with the procedure established by law, as expeditiously as possible. Further, it is trite to observe that she is at liberty to make an alternative request for visitation rights, at an appropriate stage in the OP before the trial Court, if she so desires and is so advised.

11. In the result, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this revision shall stand

closed.

28th June 2016

RAR

M. SEETHARAMA MURTI, J