

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 1094 of 2017

S. Thirunavukkarasu .. Appellant/Petitioner

Versus

1. S. Shiyamala
2. P.V. Srinivasan ... Respondents/Respondets

Appeal filed under Section 19 of the Family Courts Act against the Fair and Final Order dated 23.05.2016 passed in G.W.O.P. No. 1 of 2016 on the file of Family Court, Erode.

For Appellant : Mr. A. Thiyagarajan

For Respondents : Mr. R. Ponnusamy

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The appellant, who is the grand father of the minor son Pranavel, born to the deceased son of the appellant and the first respondent, has come forward with this appeal aggrieved by the order dated 23.05.2016 passed in G.W.O.P. No. 1 of 2016 on the file of Family Court, Erode. By the said order dated 23.05.2016, the Family Court, Erode declined to appoint the appellant as guardian of the minor Pranavesh and also to entrust the custody of the minor child to him.

2. The appellant herein has filed a Petition under Section 7 (a), 8 and 10 of The Guardians and Wards Act, 1880 seeking to appoint him as guardian for the minor Pranavesh. According to the appellant, his son Ashok Kumar married the first respondent herein during the year 2011 and due to such wedlock, the minor Pranavesh born on 03.05.2012. While so, on 31.12.2012, the son of the appellant Ashok Kumar died and thereafter, the first respondent contracted second marriage with the second respondent herein. In such circumstances, the appellant has filed the above said Petition in G.W.O.P. No. 1 of 2016 before the Family

Court, Erode seeking to entrust the custody of the minor and also to declare him as the guardian of the minor Pranavesh, who is in the custody of the first respondent, his daughter-in-law.

3. The Original Petition was resisted by the first respondent herein by contending that the minor son is in her custody since his birth. She being the mother and natural guardian of the minor, she alone is entitled for the custody of the minor son and the appellant, who is the paternal grand father of the minor, is not entitled for the custody of the minor child or for declaring him as the guardian.

4. Before the Family Court, on behalf of the appellant, he examined himself as PW1 and Exs. P1 and P2 were marked. On behalf of the respondents, the first respondent examined herself as DW1 but no document was marked. The Family Court, Erode, on considering the oral and documentary evidence, dismissed the Original Petition filed by the appellant and refused to declare him as the guardian of the minor Pranavesh.

5. When the appeal came up for hearing on 07.07.2017, this Court passed the following order:-

4. When the appeal was taken up for hearing yesterday i.e., 06.06.2017, as directed, the appellant, respondents along with the minor son have appeared before us and we have enquired the parties. The learned counsel appearing for the appellant would only contends that pending this appeal, the appellant can be permitted to see the minor child atleast on any Saturday and Sunday.

5. We have heard the learned counsel for the respondents who has opposed to provide visitation right to the appellant to see the minor child.

6. Having regard to the facts and circumstances of the case, the first respondent is directed to handover the custody of the minor child to the appellant herein on Second Saturday every month at 9.00 am at V.O.C. Park, Erode. The appellant is directed to retain the custody of the Minor Pranavel from 9.00 a.m. till the next day i.e., Sunday and handover the custody of the child to the first respondent herein at 6.00 p.m. at V.O.C. Park, Erode. This is a temporary arrangement made in the interest of justice, pending disposal of the above appeal. Post the appeal for further hearing on 17th August 2017.

6. It is represented by the counsel for both sides that as per the interim order dated 07.07.2017, the custody of the minor

was handed over to the appellant on 12.08.2017 and after retaining his custody, the minor child was handed over to the first respondent on 13.08.2017. The counsel for both sides further submitted that the interim arrangement, as directed in the order dated 07.07.2017, shall continue until further orders.

7. In the light of the above submission of the counsel for both sides, we are not inclined to interfere with the order passed by the Family Court, Erode. The Civil Miscellaneous Appeal is disposed of with an observation that the interim order granted by this Court on 07.07.2017 shall continue until further orders or till the minor attains majority. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Judge/Presiding Officer
Family Court, Erode.

2.The Section Officer,
VR Section,
High Court, Madras(2 copies)

+1cc to Mr.Mr. A. Thiyagarajan, Advocate, S.R.No.59386

+1cc to Mr.Mr. R. Ponnusamy, Advocate, S.R.No.59637

CMA No. 1094 of 2017

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