



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1102 of 2016

and

CMP (MD) No.9890 of 2016

1.Enoth Rathinam

2.Alexander

... Appellants/Respondents

Vs.

Vembadimuthu

... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal is filed under Section 47 of Guardian and Wards Act, 1890 to set aside the fair and decretal order dated 30.06.2016 made in G.W.O.P.No.79 of 2012 on the file of the Principal District Court, Tuticorin.

For Appellants : Mr.R.J.Karthick

For Respondent : Mr.M.P.Senthil

JUDGMENT

The issue in this appeal relates to the custody and guardianship of the minor child Simon Singh. The said child was born to Alexander, the second appellant herein and Meena, the daughter of the respondent herein. The first appellant is none other than the father of the second appellant.

2.The said Meena and Alexander got married on 11.05.2005. ON 03.06.2006, the minor child Simon Singh was born. The said Meena passed away on 18.04.2009. The child is presently in the custody and guardianship of his father Alexander. The said minor child is a special child. It appears to be suffering from a mild form of Down's syndrome. Therefore the maternal grand father Vembadimuthu moved the Principal District Judge, Tuticorin for declaring himself as a guardian and he also sought custody of the child. The trial Judge by order dated 30.06.2016 allowed G.W.O.P.No.79 of 2012. Aggrieved by the same, this appeal has been filed by the father Alexander and grand father Enoth Rathinam.

3.Since the issue pertains to the welfare of the child, I directed the appellants to produce the child before me. Accordingly, the child was produced before me on 12.12.2017 in my Chamber. I had a long personal session with the child. The child



is being brought up well by the appellants. He is also in a happy frame of mind. Of course, the disability attached to Down's syndrome is there.

4. In these circumstances, I am of the view that it would not be just and fair to take the child away and hand him over to the custody of the maternal grandfather. Due to inadvertence, the typist had erroneously mentioned that the maternal grandmother of the child is no more. The learned counsel for the appellants regrets the said error. The fact that the father notwithstanding the second marriage and begetting a child through the second marriage wants the custody of the minor child goes to show that he is truly attached to the child. I therefore set aside the order dated 30.06.2016 made in G.W.O.P.No.79 of 2012 on the file of the Principal District Judge, Tuticorin. This appeal stands allowed.

5. However, the maternal grand father Vembadimuthu is entitled to visit the child every Sunday. The appellants are directed to leave the child in the house of the maternal grand father Vembadimuthu in the evening of last Saturday of every month and the child can be taken back on the evening of the next day. The appellants shall make arrangements to ensure that the said child can be for two days at a stretch during X-mas vacation and summer vacation.

6. With the above directions, this civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. The Principal District Judge, Tuticorin.
2. The Record Keeper, V.R. Section
Madurai Bench of Madras High Court, Madurai.

+1. CC to Mr.R.J.Karthick Advocate SR.No.92837

+1. CC to Mr.M.P.Senthil Advocate SR.No.93053

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