



WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.11.2017**

**CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.M.A. (MD) No.1301 of 2015
and
C.M.P. (MD) No.1943 of 2016**

M.Ansar

... Appellant

Vs.

1.Rikana
2.Sahabdheen
3.Aysha Beevi

... Respondents

Prayer: Civil Miscellaneous Appeals are filed under Section 47 of Guardian and Wards Act, to set aside the order and decree dated 10.08.2015 in G.W.O.P.No.380 of 2012 on the file of District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.Thayumanasamy

For Respondents : Mr.Robinson

JUDGMENT

Heard the learned counsel on either side.

2.The appellant herein got married to one Rikana on 17.08.2008 as per Muslims rights and customs. A child was born to 23.05.2009. Differences arose between the couple and the appellant divorced the first respondent on 04.10.2012. The child Mohammed Ajmal is with the mother. It is now stated that the appellant as well as the first respondent got remarried. The husband of the first respondent is employed abroad. The appellant filed G.W.O.P.No.380 of 2012 on the file of the District Court, Kanyakumari District at Nagercoil seeking custody of the child. The appellant examined himself and his father. However, he did not choose to examine his present wife Jasmine. The learned trial Judge also remarked that the appellant has doubted the very paternity of the minor child. The petition seeking custody and guardianship came to be ultimately dismissed. Challenging the same, this appeal has been filed.

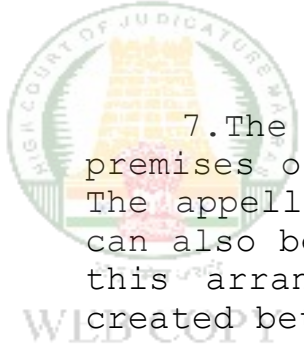
3.The learned counsel for the appellant contended that there is absolutely no basis for the finding that the appellant ever doubted the paternity of the child. This Court went through the entire evidence. There is no justification for arriving at such a finding. It is true that the appellant has suggested that the first respondent was acting at the instance of one Ayob. But that cannot lead to the influence that the appellant doubted the paternity of the child. The said finding is therefore vacated.



4.The question is in whose custody the child should remain. In this case, the appellant had got remarried. The mother viz., the first respondent has also got remarried. The first respondent herein in her counter has alleged that the appellant has divorced the second wife and has now got into a third marriage. The said allegation is denied by the appellant. But the fact remains that the appellant did not examine the said Jasmine before the trial Court. The cruel treatment that is meted out by the step mothers is a social reality. Of course, there are many exceptions. In this case, if the said Jasmine has got into the witness box and sworn before the court that she would consider the said Mohammed Ajmal as her own child, then the same can certainly be taken note of. But, that is not the case here. The said Jasmine was not examined. The appellant has another child through his second marriage.

5.Since the matter concerns the welfare of a minor child, I directed the first respondent to produce the child before me. I conversed with the child in my Chambers. The boy is being brought up well. He is getting good education. He wants to become a police officer. The boy is very clear that he wants to stay only with his mother. He does not want to go to the father even during the weekend. The child is not a chattel. Therefore, the desires of the child will have to be taken into account. I am of the view that the interest of the child will be better served if he continues to be in the custody of his mother. Of course, as the father, the appellant is entitled to have visitation rights. The father is entitled to see the child every Sunday. I suggested to the first respondent as well as the child that the child can meet the father in the premises of the local 'Pallivasal'. The said Pallivasal is stated to be a spacious place of worship. Therefore, in such a conducive atmosphere, there may be regular meetings between the father and the child on every Sunday.

6.The present husband of the first respondent is employed abroad. It is quite possible that the first respondent may have to join her present husband if the need arises. In such a situation, the child will certainly have to go with the first respondent. It is open to the first respondent to file an application before the trial Court and take the child with her after getting permission. The order of the trial Court cannot be faulted. It took into consideration the paramount interest and welfare of the minor child. Though one of the reasons assigned by the trial Court is not correct, on an independent consideration of the materials on record and in view of my personal session with the child, I am of the view that the order passed by the trial Court does not warrant any interference.



7.The first respondent is directed to leave the child in the premises of the local 'Pallivasal' at 10.00 a.m. on every Sunday. The appellant as well as his parents and other relatives, if any can also be present. The first respondent shall strictly abide by this arrangement. It is necessary that a natural bonding is created between the father and son.

8.After I passed this direction, the appellant who was in the visitors' gallery came forward and informed this Court in person that he does not want to see the child any further. Since the appellant himself is not desirous of abiding by the aforesaid arrangement, I have no other option but to recall the direction given earlier.

9.Accordingly, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

1. The District Judge, Nagercoil.
2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A. Robinson, Advocate Sr.No.87104

ARUL

VB/SV/MMS/SAR1/09/11/2017/3P/4C

**C.M.A. (MD) No.1301 of 2015
and
C.M.P. (MD) No.1943 of 2016
13.11.2017**