



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.765 of 2017

and

C.M.P. (MD) No.8271 of 2012

1.A.Malaichamy

2.M.Pappa

... Appellants/Respondents

Vs.

James John Britto

... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal filed under Section 47 of the Guardians and Wards Act, 1890 to call for the impugned order dated 21.07.2017 made in G.W.O.P.No.138 of 2012 on the file of the learned Additional District Judge, Dindigul and to set aside the same.

For Appellants

: Mr.S.M.A.Jinnah

For Respondent

: Mr.James John Britto appeared
party in person.

JUDGMENT

The grand parents of the minor child Sharon are the appellants in this Civil Miscellaneous Appeal. They challenge the order dated 21.07.2017 made in GWOP.No.138 of 2017 on the file of the Additional District Judge, Dindigul.

2.The respondent herein filed the said petition under Section 7 and 10 of Guardian and Wards Act, 1890. The respondent got married to Gethsiya Chitra, the daughter of the appellants herein on 23.05.2010. The wife of the respondent left the marital home on 22.01.2011. The respondent thereupon filed IDOP.No.32/2011 seeking restitution of conjugal rights. In the meanwhile, Gethsiya Chitra gave birth to minor child Sharon on 16.05.2011. Due to complications occurred during the delivery, she passed away on 19.05.2011. In the meanwhile, on 17.05.2011, Crime No.17/2011 was filed against the respondent herein. Thereafter, the appellants filed M.C.No.37/2011 before the Additional Chief Judicial Magistrate, Madurai seeking maintenance. A sum of Rs.10,000/- was directed to be paid every month by the respondent herein. Contending that he should be declared as the guardian of the minor child, the respondent filed GWOP.No.138 of 2012 and the same was allowed on 21.07.2017. Aggrieved by the same, this Civil

Miscellaneous Appeal has been filed by the grand parents.

3. Heard the learned counsel for the appellants and the respondent, who appeared in person. I also had an extensive discussion with both the parties in my chamber.

4. The respondent herein while contesting MC.No.37 of 2011 filed by the appellants herein, questioned the very paternity of minor child Sharon. I was therefore inclined to reverse the order of the Trial Judge in toto and allow this Appeal. The respondent not only took such a plea in the counter but also reiterated the same in his proof affidavit. In other words, after filing the present GWOP, he continued to take such a stand. It is also evident from the record that the relationship between the respondent and his wife was under considerable strain. The child was born on 16.05.2011 and it has been with the grand parents ever since. I examined the child in my chamber and I found the child to be of friendly disposition. It is being brought up well and it is studying in a good school. Therefore, the interest of the child would be seriously affected, if it is forcibly taken away from the custody of the grand parents and handed over to the respondent. At the same time, this Court cannot lose sight of the fact that the grand parents are aged persons. The grand father is not having independent source of income. On the other hand, the respondent firmly asserted that the child is very much his and that he has got financial wherewithal to bring her up well. This Court called upon the respondent to file a memo in this regard. Memo dated 09.10.2017 filed by the respondent is taken on record. Having considered all the circumstances, I am inclined to dispose of this appeal in the following terms :

(i) The order dated 21.07.2017 made in GWOP.138/2012 is confirmed only to the extent it appoints the respondent as the natural guardian of minor child Sharon.

(ii) The direction to hand over the minor child to the respondent is hereby set aside. The minor child Sharon shall continue to be with the appellants / grand parents. However, the respondent shall be permitted to see and be with her in the premises of Pasumalai C.S.I Church on every Sunday. The appellants shall inform the respondent of the timings through appropriate mode.

(iii) The respondent undertakes to handover 13-1/2 sovereign of gold which was given by the first appellant herein at the time of marriage of the appellant's daughter. The respondent is given six months time to hand over the said quantity of gold in the form of coins issued by a Nationalised Bank. The appellants shall extend their co-operation for quashing the criminal case filed by them against the respondent.

(iv) The parties herein shall request this Court to close Contempt Petition (MD) No.46 of 2014. Whatever cases or complaints have been filed by the appellants against the respondent shall be given a quietus by taking appropriate proceedings or by giving their no objection.



(v)The respondent shall deposit a sum of Rs.10,000/- in the bank account of the grand father / first appellant on or before 5th of every month towards the maintenance of the minor child Sharon. The appellants shall withdraw Crl.M.P.No.886 of 2017 in M.C.No.37 of 2011 on the file of the Additional Chief Magistrate Court, Madurai.

(vi)The respondent is at liberty to approach the concerned authorities for entering the correct particulars with regard to the name of the child or that of its parents. The appellants are directed to execute appropriate consent letters for enabling the respondent to obtain birth certificate of minor child Sharon or the death certificate of the Gethsiya Chitra with correct details.

(vii)The respondent on his own submitted that he shall not lay any claim on the property of the appellants.

(viii)It is open to the respondent or the appellants to take out appropriate applications in these proceedings even though this CMA stands disposed of.

5.Both the parties agreed to comply with the directions set out above in letter and spirit. This Civil Miscellaneous Appeal is partly allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge, Dindigul.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.JAMES JOHN BRITTO, PARTY IN PERSON IN SR No. 82486

SKM/ARUL

TE/RSK/SAR-2 : 31/10/2017 : 3P/4C

C.M.A. (MD) No.765 of 2017 and
C.M.P. (MD) No.8271 of 2012
10.10.2017