



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.411 of 2015

and

C.M.P. (MD) No.4250 of 2016

K.Ponnarasi

... Appellant

Vs.

P.Alagu Muthuraj

... Respondent

Prayer: Appeal filed under Section 47 of the Guardian and Wards Act, to set aside the judgment and decree dated 08.07.2013 passed in G.W.O.P.No.174 of 2011 on the file of the Principal District Court, Thoothukudi.

For Appellant : Mr.R.Manimaran

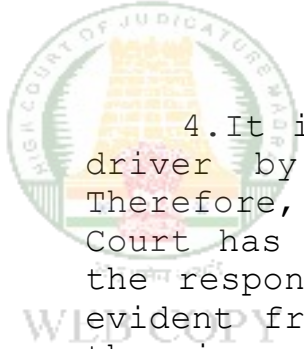
For Respondents : Ms.M.Anbarasi for
Mr.D.Selvanayagam

JUDGMENT

The grandmother of the minor child in question has filed this civil miscellaneous appeal, challenging the order dated 08.07.2013 made in G.W.O.P.No.174 of 2011 on the file of the Principal District Court, Thoothukudi.

2.The respondent herein filed the said G.W.O.P. seeking custody of his minor child Karthikeyan. The appellant's daughter Indira Devi was given in marriage to the respondent on 22.02.2007. The minor child Karthikeyan was born on 18.01.2008. Indira Devi passed away on 29.03.2011. The child is presently in the custody of the appellant grandmother. The respondent herein therefore filed the said petition for declaring that he is the guardian of minor Karthikeyan and sought a direction for handing over the custody of the child to him. The Court below allowed the said petition. Aggrieved by the same, this appeal has been filed.

3.Heard the learned counsel for both parties.



4. It is seen that the respondent is a lorry driver. A lorry driver by virtue of his avocation will be away from home. Therefore, he cannot take personal care of the child. The trial Court has given a specific finding that the marital life between the respondent and Indira Devi was not satisfactory. It is not evident from a reading of the impugned order that the wishes of the minor were ascertained by the Court. The appellant's daughter had left the matrimonial home. Even though the respondent had claimed in the petition that he is having cars and is having transportation business, he has not chosen to adduce any evidence to demonstrate his financial wherewithal.

5. The child has been with the grandmother all these years. If the child is forcibly removed from the grandmother and handed over to the custody of the respondent, it would certainly cause psychological injury and damage to the child. At the same time, it cannot be forgotten that the respondent is the father of the child, who is the natural guardian.

6. Therefore, I sustain the declaration given by the lower Court that the respondent is the guardian for the minor Karthikeyan. But, the direction to hand over the custody of the child to the respondent is set aside. It would be better to confer visitation rights in favour of the respondent. The respondent is at liberty to visit the child every Sunday. The appellant herein is duty bound to make appropriate arrangements to receive the respondent and ensure that the respondent is able to spend a few hours atleast with the child. If enabling a meeting between the respondent and the child in the house of the appellant would lead to any embarrassing situation, the respondent can meet the child in the temple premises or in park or in a common place in the town, where the child is residing. If a natural bonding develops between the respondent and the child in due course, it is always open to the respondent to file an appropriate application before this Court in these proceedings, even though this civil miscellaneous appeal stands disposed of.

7. The interest of the minor child is paramount. That is why a summary order removing the child from the custody of the grandmother and handing over the same to the respondent cannot be passed. Not only the interest of the child is supreme in such cases, but the Court must bear in mind that the child is also having its own rights. That will have to be respected.

8. In the result, the order declaring the respondent as guardian for minor Karthikeyan is sustained. The order directing the appellant to hand over the custody of the minor Karthikeyan to the respondent herein is set aside. The respondent shall have visitation rights as set out in the body of this order.



9.The civil miscellaneous appeal is partly allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

To

1.The Principal District Judge, Thoothukudi.

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

+1cc to M/S.D.SELVANAYAGAM, Advocate SR.No.82387

+1cc to M/S.R.MANIMARAN, Advocate SR.No.82464

Arul

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