



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2017

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)Nos.425 & 426 of 2015

and

M.P.(MD).Nos. 1 and 1 of 2015

S.Chandramohan ... Appellant/Petitioner in both cases

vs

1.A.Govindarajan

2.G.Kalaiselvi ... Respondents/Respondents in both cases

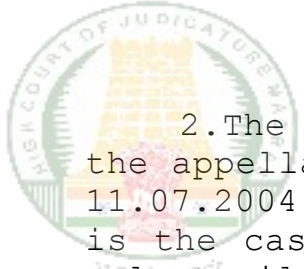
Common Prayer: Appeals filed under Section 47 of the Guardian and Wards Act, 1890, to call for the records and set aside the order G.W.O.P.Nos.225 and 257 of 2011, on the file of the Principal Sub Court, Thanjavur, dated 23.12.2014 and allow these Civil Miscellaneous Appeals with cost.

For Appellant : Mr.T.V.Sivakumar
in both appeals

For Respondents : Mr.G.Karnan for R.1 & R.2
in both appeals

JUDGMENT

The father of the minor child Srilekha is the appellant in both these appeals. C.M.A.(MD).No.425 of 2015 is directed against the order made in G.W.O.P.No.225 of 2011 on the file of the Principal Sub Court, Thanjavur. C.M.A.(MD).No.426 of 2015 is directed against the order made in G.W.O.P.No.257 of 2011 on the file of the Principal Sub Court, Thanjavur. G.W.O.P.No.225 of 2011 was filed by the appellant herein seeking custody of the child. G.W.O.P.No.257 of 2011 was filed by the respondents herein seeking declaration that they are the guardians of the minor child. While the petition filed by the appellant was dismissed, the one filed by the respondents was allowed by a common judgment dated 23.12.2014 by the Trial Court. Aggrieved by the same, these appeals have been filed.

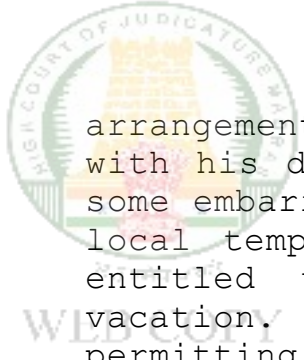


2.The respondents herein gave their daughter in marriage to the appellant on 08.12.2002. The minor child Srilekha was born on 11.07.2004. The appellant's wife Kavitha died on 22.11.2005. It is the case of both the parties that the child was willingly and voluntarily handed over by the appellant to the respondents who are none other than the grand parents of the child. The understanding between the parties was that the appellant would go for a re-marriage and thereafter take back the child. The appellant has not begotten any child through his second wife. When the appellant wanted the grand parents to hand over the custody of his child, the grand parents refused. This led to the institution of the present proceedings. The Court below examined the child. The child expressed her wish that she wanted to continue to be with the grand parents. In that view of the matter, the Trial Court declared the grand parents as the guardian of the child. The Trial Court not only dismissed the petition filed by the father / appellant herein, but even denied his visitational rights.

3.The learned counsel for the appellant would point out that the Trial Court erred in deciding the issue solely based on the wish expressed by the child. It is his contention that the father being a natural guardian could not be denied his status, unless he is specifically found unfit. The learned counsel took me through the deposition of the maternal grand father / first respondent herein and it could be seen that the respondent have not really said anything against the father of the child.

4.I am therefore of the view that the Court below could not have declared the grand parents as guardian when the father is very much alive. Absolutely nothing can be said against the appellant herein. I therefore unhesitatingly set aside the decree dated 23.12.2014 made in G.W.O.P.No.257 of 2011 on the file of Sub Court, Thanjavur, with regard to the appointment of grandparents as guardians. But the question is whether the custody of the child should be handed over to the father. It is seen that the child was born on 11.07.2004. It has been with the grand parents for the last 12 years. Therefore, the child would suffer psychological damage if she is forcibly removed from the custody of the grand parents. Therefore, I do not wish to interfere with the order passed by the Court below declining to hand over the custody of the child to the appellant herein. It is seen that the Court below has given liberty to the appellant and file a fresh petition on the completion of 15 years of age by the child. At the same time, the appellant cannot be denied his visitation rights.

5.I therefore direct the respondents to permit the appellant to see the child on the second and the fourth Sunday of every month. It is the duty of the respondents to make appropriate



arrangements in their house so as to enable the appellant to be with his daughter atleast for a few hours. If this would led to some embarrassment, any meeting place such as the premises of the local temple can be agreed upon. The appellant/father is also entitled to take his daughter for two weeks during summer vacation. The respondents are strictly instructed that this order permitting the visitation rights for the appellant / father cannot be frustrated by citing some flimsy reasons. The decree dated 23.12.2014 made in G.W.O.P.No.225 of 2011 and G.W.O.P.No.257 of 2011 are accordingly modified. C.M.A.(MD).Nos.425 and 426 of 2015 are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sub Court, Thanjavur.

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

+ 1 cc TO Mr.H.Lakshmi Shankar , Advocate in SR No. 82079

+ 2 ccs TO Mr.G.Karnan , Advocate in SR No. 82064,82065

tsg

AE/JC/SAR4/02.01.2018/3P/6C

JUDGMENT MADE IN
C.M.A. (MD) Nos.425 & 426 of 2015
10.10.2017