



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.916 of 2017

and

C.M.P. (MD) Nos.9703 and 11001 of 2017

Yasmin Begam

... Appellant

Vs.

1.Kamil Anwar

2.Jahir Abbas

3.Abdhul Humain

4.Mrs.Abdul Humain

5.Liyakath Ali

6.Jegajothi @ Rameeza

7.Kamil Hasan

8.Meharunissa

9.Kamil Ansar

... Respondents

Prayer: Appeal filed under Section 47 of the Guardian Wardship Act, 1890, against the fair and decreetal order dated 07.12.2016 made in G.W.O.P.No.29 of 2014 on the file of the Principal District Court, Tiruchirappalli.

For Appellant

: Mr.M.Mohaboob Athiff for
M/s.Ajmal Associates

For R1, R7 to R9

: Mr.S.M.A.Jinnah

For R5 & R6

: No appearance

**J U D G M E N T**

The first respondent herein, Kamil Anwar is the elder brother of Kamil Asraf. The said Kamil Asraf got married to Yasmin Begam on 30.12.2007. A male child Kamil Aslam was born to them on 28.09.2008. Kamil Asraf passed away on 30.04.2011. Yasmin Begam, the appellant herein got re-married to Jahir Abbas in June 2013. The first respondent herein, who is the paternal uncle of the minor child, Kamil Aslam thereupon filed G.W.O.P.No.29 of 2014 on the file of Principal District Court, Tiruchirappalli. The learned trial Judge, by order dated 07.12.2016, allowed the petition and appointed the first respondent herein as guardian for the person as well as the property of the minor child. He also directed that the custody of the minor child be given to the first respondent herein. Aggrieved by the same, the mother has filed this appeal.

2.The learned counsel appearing for the appellant pointed out that the remarriage by the mother can never constitute a ground of disqualification. In any event, the paternal uncle of the child cannot be conferred with the guardianship of person and property of the minor child. In matters concerning guardianship and custody of the minor child, the paramount consideration can only be the welfare of the child. This Court finds it shocking that the child is sought to be removed from the custody of the mother and handed over to the paternal uncle.

3.The learned counsel appearing for the first respondent pointed out that because of her second marriage, the appellant is residing at Chennai, whereas, the child continues to be in the custody of maternal Grandparents only.

4.The learned counsel appearing for the appellant fairly submitted that the mother is shuttling between Palani and Chennai. Her husband Jahir Abbas is working in Chennai. The parents of the appellant are at Palani. The minor child is presently studying in IV Standard in Devi Matriculation Higher Secondary School, Mill Road, Anna Nagar, Palani.

5. In this case, it is not the paternal Grandfather of the minor child who has chosen to file the Guardian Wardship Original Petition. It is the paternal uncle, who has moved the Court, seeking guardianship and custody. In fact, the paternal Grandparents of the child, who are the parents of the first respondent are shown as respondents in the Guardian Wardship Original Petition. I have to necessarily take note of the conduct of the first respondent herein. The contest was only between him and the mother of the child. The fact that he has chosen to contest the custody of the child with his present husband of the appellant and his parents show that his intention is more to vex and embarrass the appellant herein.



6. It appears that the deceased brother of the first respondent herein had left some properties in the name of the minor child. That is why, the petition has been filed seeking guardianship not only for the person but also for the property of the minor child. The very institution of the petition is clearly lacking in *bona fides*. I, therefore, have no hesitation to set aside the order 07.12.2016 in G.W.O.P.No.29 of 2014 on the file of the Principal District Court, Tiruchirappalli.

7. The learned counsel appearing for the respondent had shown photographs from which one can see that the minor child is quite attached to his paternal Grandparent.

8. In fact the learned counsel appearing for the appellant would fairly submit that the child has no problem in being visited by the paternal Grandparents. It is only the paternal uncle, the first respondent herein, who appears to have vexed the appellant and the minor child.

9. Therefore, even while allowing this appeal filed by the mother of the minor child, the paternal grandparents are entitled to have visitation rights over the minor child. It is the duty of the appellant herein as well as her parents to make proper arrangements in this regard. The paternal grandparents of the minor child are entitled to visit the minor child at Palani on every second Sunday.

10. Since this Court is of the view that the minor child is also having a natural bonding with the paternal grandparents, the appellant herein is directed to arrange for the stay of minor child in the residence of the paternal grandparents for a few days during summer vacation.

11. This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,

<https://hcservices.courts.gov.in/hcservices/>
Tiruchirappalli.



Copy to

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.S.M.A.Jinnah , Advocate in SR No. 92762
+ 1 cc TO M/S.Ajmal Associates, Advocate in SR No. 92462

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