

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A No.88 of 2017

JUDGMENT: *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the present appellants seek direction thereby to set aside the decree and order in GWOP No.724 of 2013 dated 27.01.2017 passed by the XV Additional Chief Judge-cum-II Additional Family Judge, Ranga Reddy District, Kukatpally, at Miyapur.

2) The appellants are maternal grand parents of the minor girl—L.Sanvi Reddy, aged about 6 years.

3) The respondent, who is the father of said minor girl, filed a petition under Sec.25 of the Guardians and Wards Act to appoint him as natural guardian of the minor child and consequently, direct the appellants herein to handover the child to the respondent.

4) The respondent averred in his petition that he married with the daughter of the appellants herein on 27.05.2010. The marriage was registered at Sub-Registrar office, Madira on 24.06.2010. Later, they lived happily and a girl by name L.Sanvi Reddy was born on 07.03.2011. On 10.02.2013, the respondent admitted his wife in Nest Hospital for second delivery. On 11.02.2013, she gave birth to a son but due to the negligence of

doctors, the wife of respondent and son died immediately. The respondent made a complaint in Kukatpally Police Station against the doctors. Consequently, the police registered a case against the doctors for the offence punishable under Sec.304A of I.P.C.

5) It is further stated in the said petition that when the respondent was planning to perform the cremation in his native place, the appellants had taken away the dead body of his wife forcibly to Karimnagar and completed the cremation without the consent of respondent. The appellants had also taken away the daughter of the respondent. Even to perform pedda karma, they had not attended and did not send his daughter. The appellants, who are grand parents of the minor child, are old aged persons of 75 and 70 years and they are not in a position to look after the child. The mother of the respondent was hale and healthy, as she was staying with the respondent and in the absence of the respondent, she would look after the child. The respondent being father is a natural guardian and hence, for the welfare of the child, it is always necessary for the child to stay along with the respondent. After enquiry, the trial Court allowed the petition. Hence the CMA.

6) Learned counsel appearing on behalf of the appellants would submit that the Court below failed to appreciate the arguments put-forth by them and did not consider the decision

in ***Baby Sarojam vs. S.Vijayakrishnan Nair***¹ except considering the decision in ***K.Venkat Reddy vs. Chinnapareddy Viswanadha Reddy***² submitted by the respondent. He argued that the lower Court erred in observing that the petitioner therein was an educated person, doing job and was qualified and it is not a fit case to consider the request of the respondent. The Court failed to see the evidence of the respondent/PW.1. During the cross-examination, he clearly stated that he had not contributed any amount towards welfare and maintenance of his daughter and also in-laws. Also stated that he did not send any school fees for his daughter's education to his in-laws and his daughter was not in exclusive custody of his mother. Despite it, the lower Court allowed the petition.

7) Learned counsel further submitted that the respondent has solemnized second marriage and one male child was also born out of their wedlock and therefore, the minor daughter will not be happy to stay with the respondent because she never stayed with him in past and she does not even recognize the respondent as her father. He further submitted that the paramount interest of the child has to be taken into consideration and in that view, the child may be ordered to remain with the appellants, who are the maternal grand parents of the child.

¹ AIR 1992 (Kerala) 277

² 2008(6) ALT 360 (DB)

8) It is not in dispute that before the death of the daughter of the appellants, there was no matrimonial dispute between the respondent and the daughter of the appellants. The wife of the respondent died in the hospital at the time of second delivery. The respondent made complaint to the police against the negligence of the doctors while attending delivery of the second child. Consequently, a case under Sec.304-A IPC registered against the doctors.

9) It is not in dispute that the minor child in question was born on 07.03.2011 and her mother died on 11.02.2013. At that stage, she was just 2 years old and immediately, thereafter she was taken by the appellants. Thereafter, she never met the respondent and there was no occasion for respondent to look after her welfare. Hence, the respondent filed GWOP No.724 of 2013 under Sec.25 of the Guardian and wards Act to appoint him as a natural guardian of the minor child.

10) On behalf of respondent, he himself was examined as PW.1 and got marked Exs.P.1 to P.11. On behalf of the appellants, appellant No.2 was examined as RW.1, neighbour of RW.1 was examined as RW.2 and other daughter of appellants was examined as RW.3 and Exs.R.1 to R.4 were marked on their behalf.

11) The issue before the Court below and this Court was whether the respondent is entitled for the relief as prayed by him.

12) Admittedly, the respondent and daughter of the appellants are husband and wife respectively. The minor child, who is aged about 7 years now, is the daughter of the respondent and the grand daughter of the appellants. The ages of the appellants 1 and 2 are shown as 75 and 70 years respectively and the contention of the respondent is that they are old aged and hence they are not in a position to look after the child. Appellant No.2, who was examined as RW.1, admitted in her cross-examination that she was an illiterate; her son and other daughters studied only upto Intermediate and their native place is Karimnagar. Whereas it is stated before the Court below by the respondent that because the appellants are old aged persons they are not in a position to look after the child. Moreover, as per Hindu law, the respondent being the father, is a natural guardian of the child.

13) In view of the above observations, the Court below has relied upon **K.Venkat Reddy's** case (2 supra), wherein it was observed that the interest and welfare of the minor child being the paramount consideration, the economic condition of the father and the status in society also needs to be assessed vis-à-vis the maternal grand father. In a matter of this nature where the grandparents are seeking preferential custodial right over the natural father's claim for custody of the minor child, it is essential for the grand parents to plead and establish that the natural Guardian being father is unfit or is otherwise disqualified from being given the custody of the child.

14) The respondent/father of the child is present in Court. On query by the Court, he would submit that he works as a Senior Developer in Capgemini India Pvt. Ltd and getting salary of Rs.45,000/- p.m. He can look after the welfare of the child well and she would get best education available as per his capacity. He has assured this Court, child would not face any ill-treatment or inconvenience at his residence in the hands of his second wife. In any eventuality, he would certainly take hard decision and admit the child in a boarding school. The welfare of the child will not be compromised under any circumstances.

15) In the light of the above observations and assurance of the respondent, we hereby find no merit in the instant appeal and the same is accordingly dismissed at the admission stage.

As a sequel, Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

Date: 09.02.2017

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