

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25.10.2018

JUDGMENT PRONOUNCED ON : 04.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.213 of 2011
and M.P.No.1 of 2011

E.Saravanan ... Appellant / Petitioner

versus

1.A.Nagaraj
2.N.Shanthi Vijayalakshmi ... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 104 of the Civil Procedure Code r/w Section 47 of the Guardians and Wards Act, 1890 against the judgment and decree dated 19.10.2010 passed in G.W.O.P.No.21 of 2010 on the file of the District Court, The Nilgiris, Udhagamandalam.

For Appellant : Ms.Priya
for Mr.V.Raghavachari

For Respondents : Mr.K.Sridhar Associates
Mr.L.Kishore

J U D G M E N T

Aggrieved over the order dated 19.10.2010 passed by the District Court, The Nilgiris, Udhagamandalam in G.W.O.P.No.21 of 2010, the appellant, who is the petitioner in the above said GWOP has preferred this Civil Miscellaneous Appeal, seeking the relief to set aside the order passed by the learned Trial Judge and to pass a decree directing the respondents to hand over the custody of the minor S.Akilesh to the petitioner.

2. For the sake of convenience hereinafter the parties are referred to, as per their litigative status before the Tribunal.

3. The petitioner is the son-in-law of the respondents. On 10.02.2006, the daughter of the respondents, Smt.Veena given in marriage with the petitioner at Sri

Thiruvenkida Perumal Koil, Sulur, Coimbatore. Out of the wedlock, a male child was born on 01.11.2006 at Sheela Hospital, Coimbatore. At the time of filing petition, the child S.Akilesh was aged about 3½ years. Further, during the time of pregnancy of Smt.Veena, cancer was diagnosed in her right breast and within 10 days from the date of delivery, the right breast and uterus were removed in order to prevent further spreading of cancer. After giving necessary treatment, in the month of September 2007, the petitioner took his wife and child to his house at Udhagamandalam. In the meanwhile, in the month of June 2009, he was appointed as Junior Assistant at Government Children Home, Social Defense Department, Panchapalli, Dharmapuri. Thereafter, the petitioner went along with his wife to Dharmapuri leaving the child at Udhagamandalam. Subsequently, the cancer spread over to her lungs, and thereby, she was admitted at Cancer Institute, Adayar and she died on 10.12.2009.

4. After completion of funeral, the respondents forcibly took the child from the custody of the petitioner and demanded Rs.2 lakhs towards the amount spent to their daughter Smt.Veena. Subsequent to that, the petitioner repeatedly attempted to take back the minor S.Akilesh from the custody of the respondents. The petitioner is a man of means and he look after his minor son's education and other aspects. Further, he is the natural guardian, he is entitled for the minor child S.Akilesh.

5. Opposing the claim made by the petitioner, by filing counter, the respondents denied the averments made in the Petition. When at the time Smt.Veena was under treatment, the petitioner removed her gold ornaments weighing about 8½ sovereigns without the knowledge of the respondents. While Veena was in a serious condition in Sheela Hospital, the petitioner went there in a drunken stage and thereby, created a scene in the Hospital. Further, the respondents never demanded any amount from the petitioner to give the child to him, he is a drunkard and he failed to do the third day function of late Veena.

6. The respondents spent more than Rs.5 lakhs for their daughter's treatment and the petitioner spent only a sum of Rs.23,500/-. As of now, the minor S.Akilesh joined in Navikash School in L.K.G., for which, the respondents paid a sum of Rs.23,000/- as fees per year. Further, the child's maternal uncle has opened recurring deposit account in the name of the child and depositing Rs.1,500/- per month and also L.I.C. Policy for a sum of Rs.1,00,000/- under 17 years Child Plan has been taken in the child's name.

7. The petitioner is a chronic alcoholic patient and he is also affected by some mental problem. In the year of 2008

itself, the petitioner was admitted in Sheela Hospital and diagnosed for depression/chronic alcoholism. The petitioner has not changed his attitude and during May 2010, he was found lying down under the influence of alcohol near Nehru Garden at Kotagiri. Being an ordinary government servant, the petitioner also under transfer and he cannot educate his child in a proper manner. According to the respondents, the petition filed by the petitioner is liable to be dismissed.

8. Before the Trial Court, in order to substantiate the claim on the side of the petitioner, 3 witnesses have been examined as P.W.1 to P.W.3, further 4 documents were exhibited as P.1 to P.4. On the side of the respondents also, 3 witnesses have been examined as R.W.1 to R.W.3 and 6 documents were exhibited as R.1 to R.6.

9. After elaborate enquiry, the learned Trial Judge dismissed the petition filed by the petitioner on the ground that the petitioner is a chronic alcoholic patient, further, he is not having any adequate income for giving better education and other opportunities to the minor child. Aggrieved over the said findings of the learned Trial Judge, the petitioner is before this Court with the present Civil Miscellaneous Appeal.

10. The learned counsel appearing for the petitioner [appellant] would contend that the petitioner being the natural guardian he is entitled to the custody of the minor child. Further, as of now, the petitioner is earning Rs.30,000/- per month, he has also changed his habits and leading peaceful and harmonious life.

11. Per contra, the learned counsel appearing for the respondents would contend that, the petitioner has not changed his habits, he has not visited to the respondents' house to see the minor child. Till now, he has not take any attempt to see the minor child which shows that the petitioner has not changed his attitude which had in the earlier days.

12. I have considered the rival submissions made on either side and perused the relevant material available on record.

13. It is an admitted fact that the petitioner is the father of the minor child and within three years after gave birth to a minor child, the wife of the petitioner died. Subsequent to the death of the wife of the petitioner, till now the minor child is in the custody of the respondents, who are the grandfather and grandmother of the minor child.

14. It is settled position that for considering these types of applications, the Court must look into the paramount

welfare of the minor child. In this case, when at the time of giving evidence as P.W.1, the petitioner has admitted that “எனக்கு குடிப்பழக்கம் இருந்ததற்கும் மன அழுத்தம் இருந்ததற்கும் நான் சிகிச்சை பெற்றேன், எனக்கு சொந்தமாக வீடு கிடையாது நான் வாடகை வீட்டில்தான் குடியிருக்கிறேன், வாடகை ரூ.2000./ நான் பஞ்ச - பள்ளியில் வேலை செய்துவருகிறேன்,” So, the said evidence clearly established that the petitioner is regularly consuming alcohol and he is not having sufficient income to maintain his family.

15. In otherwise, on the side of the respondents, the second respondent gave evidence as the minor child was studying in Navikash School in L.K.G., further L.I.C. Policy was taken in the name of the minor child for 17 years. More than that, Rs.1,500/- is depositing in Indian Overseas Bank, CSI Branch, in the recurring deposit account in the name of minor. The said evidence has not been disputed on the side of the petitioner. Further, in order to prove the said evidence, the receipt issued by the School Authorities, the copy of the Insurance Policy and the copy of the bank account slip were marked as Ex.R.3 to Ex.R.5. In otherwise, to deny the said evidence and exhibits, no contra evidence was adduced on the side of the petitioner. Even though Ex.P.3 and Ex.P.4, which are the documents to show that the petitioner is having sufficient income, in order to prove the contents of the said documents, the persons, who issued the said documents have not been examined on the side of the petitioner. It is necessary to examine the author of the said documents for accepting the same.

16. So, on culling out the entire circumstances and the evidence adduced by either side, it appears that after the death of his wife, the petitioner is not interested to see his minor son, who is now in the custody of the respondents, further, he is having the habit of consuming alcohol frequently. In the said circumstances, if the child is handed over to the custody of the petitioner, it would affect the future life of the minor child. Therefore, I am of the considered view that the findings arrived at by the Trial Court is found correct and well considered one. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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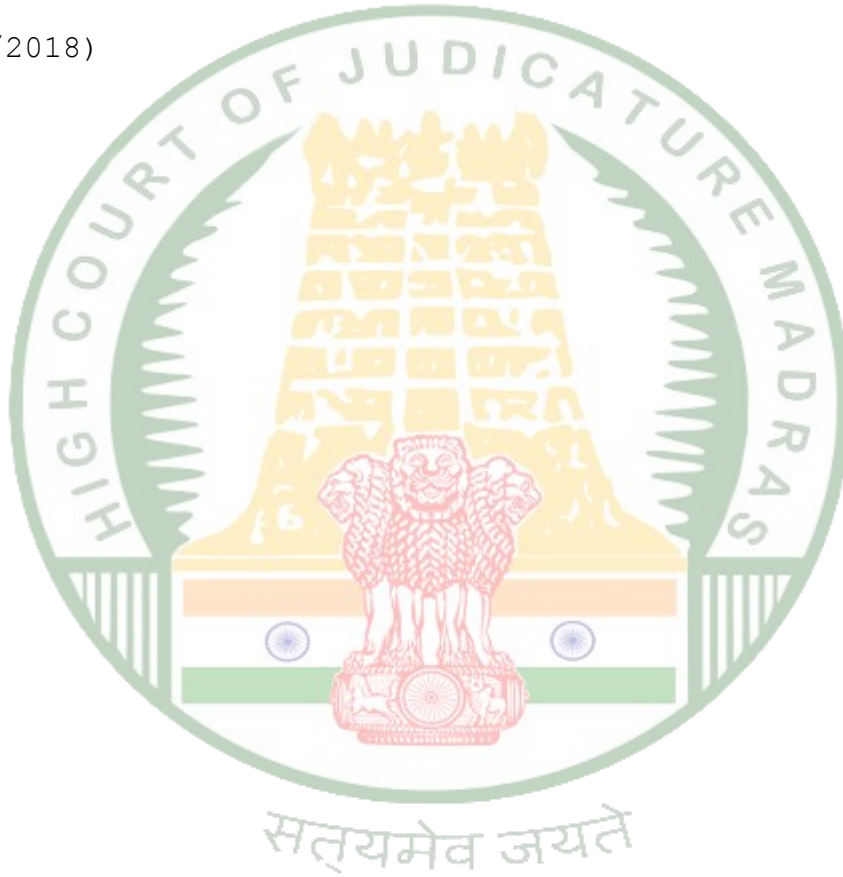
To

1. The District Court,
The Nilgiris, Udhagamandalam.
2. The Section Officer, V.R.Section,
High Court, Madras.

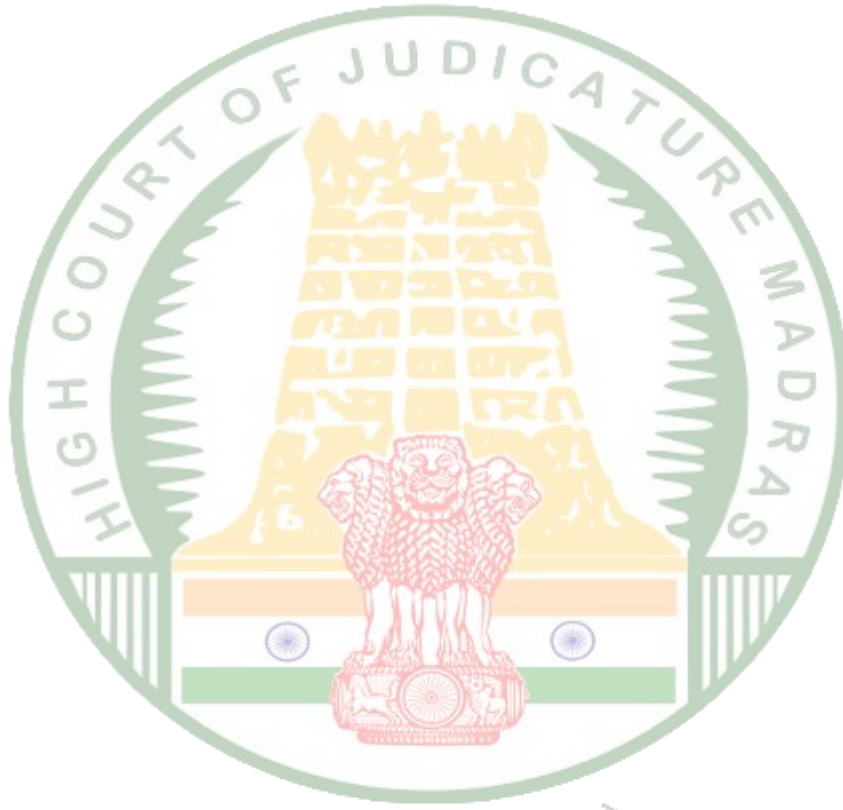
+1cc to M/s.V.Raghavachari, Advocate SR.No.82853

C.M.A.No.213 of 2011

CP (CO)
GMY (28/12/2018)



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