

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1283 of 2017

& CMP No.6627 of 2017

N.Sivasubramaniam ... Appellant/Petitioner
Vs

1.S.Venakatachalam
2.Sumithra Ammal Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed against the order dated 04.03.2016, passed by the Principal Family Court, Coimbatore, in G.W.O.P.No.457 of 2013.

For Appellant :Mr.V.P.Raju for
Mr.S.Palani Selvaraj

For Respondents :Mr.Anand Venkatesh

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Civil Miscellaneous Appeal has been directed against the order dated 04.03.2016, passed in G.W.O.P.No.457 of 2013, by the Principal Family Court, Coimbatore.

2.The appellant herein, as petitioner, has filed G.W.O.P.No.457 of 2013, on the file of the trial Court, under Section 25 of the Guardian and Wards Act, wherein, the present respondents have been arrayed as respondents.

3.The material averments made in the petition are that the petitioner is a resident of Tirupur and now, he is in Bangalore in connection with his employment. The first respondent is the father-in-law of the petitioner and second respondent is his mother-in-law. The petitioner has married the daughter of the respondents, by name, Shanmugapriya, on 02.03.2006, at Arulmigu Avinashilingeshwarar Temple, Avinashi, as per Hindu Rites and Custom. After marriage, the petitioner and his wife have stayed in Vadavalli, Coimbatore, in connection with the research work of the wife of the petitioner. The petitioner and his wife have been blessed with a male child on 04.12.2006 and he has been christened as S.S.Varun. The wife of the petitioner has passed away on 04.06.2011 and after her demise, the respondents have illegally taken the son of the petitioner. Under the said circumstances, the present petition has been filed for getting legal custody of the ward.

4.The material averments made in the counter filed on the side of the respondents are that the relationship mentioned in the petition is true. It is true to aver that both the petitioner and daughter of respondents have been blessed with a male child on 04.12.2006. It is false to aver that the daughter of the respondents has had illicit intimacy. Only due to torture given by the petitioner, the daughter of the respondents committed suicide. Now the ward in question is under the care and custody of the respondents. There is no merit in the petition and the same deserves to be dismissed.

5.On the basis of the divergent evidence available on record, the trial Court has dismissed the petition by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

6.The short point that arises for consideration in the present Civil Miscellaneous Appeal is as to whether the petitioner is entitled to get custody of the ward.

7.It is an admitted fact that the respondents are the in-laws of the petitioner. It is also equally an admitted fact that the wife of the petitioner has given birth to a male child on 04.12.2006 and he has been christened as S.S.Varun. It is also equally an admitted fact that the wife of the petitioner has passed away on 04.06.2011. From the date of demise, the ward in question is under the care and custody of the respondents.

8.As mentioned supra, the trial Court, after considering the available evidence on record, has dismissed the petition.

9.The learned counsel appearing for the appellant/petitioner has contended to the effect that the petitioner is the natural guardian of the ward and he is entitled to get his custody; whereas, the respondents are nothing but his in-laws and the trial Court, without considering the legal right of the petitioner and also relationship between him and ward, has erroneously dismissed the petition and therefore, the dismissal order passed by the trial Court is liable to be set aside.

10.Per contra, the learned counsel appearing for the respondents has contended to the effect that during life time of daughter of the respondents, the petitioner has unnecessarily thrown mudslings upon her and due to that she committed suicide and from the date of her death, the ward is under the care and custody of the respondents and the trial Court, after considering the overall evidence available on record, has rightly dismissed the petition and therefore, the dismissal order passed by the trial Court does not call for any interference.

11.It is seen from the records that the wife of the petitioner has passed away on 04.06.2011. From the date of demise, the ward is under the care and custody of the respondents. Further it is seen from the records that after the demise of wife of the petitioner, he married one Tamilarasi as his second wife and both of them have been blessed with a female child.

12.Considering the nature of relief sought in the petition, this Court has directed to produce the ward and accordingly he has been produced and enquired deeply and he expressed his willingness to live with the respondents.

13.Considering the fact that the willingness of the ward is a paramount consideration and also considering the fact that the petitioner has married second wife and through her he is having a female child, this Court is of the view that the relief sought in the petition cannot be granted.

14.The trial Court, after considering the overall evidence available on record, has rightly dismissed the petition. In view of the discussion made earlier, this Court has not found any error nor illegality in the order passed by the trial Court and altogether, the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed without costs. The order passed in G.W.O.P.No.457 of 2013 is confirmed. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msk

To

The Principal Judge, Family Court,
Coimbatore

+1cc to Mr.Palani Selvaraj, Advocate Sr.No.5702
+1cc to MR.N.Anand Venkatesh, Advocate SR.No.5413

PA(CO)

sm:6.2.2018

C.M.A.No.1283 of 2017