

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2018

PRONOUNCED ON : 21.12.2018

CORAM :

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

CMA No.2811 of 2013

Ananda Natesan

... Appellant

Versus

Hemalatha

.... Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 47 of Guardian and Wards Act against the Judgment and decree passed by the Principal District Judge, Cuddalore in Guardian Original Petition No.93 of 2011, on 25.04.2013 dismissing the petition filed by the appellant under Section 25 of Guardian and Wards Act praying to restore custody of his minor daughter Arundhathi born on 20.09.2004.

For Appellant : Mr.N.Suresh Kumar

For Respondent : Mr.V.B.Selvaganapathy

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the petitioner / appellant herein against the judgment and decree passed by the learned Principal District Judge, Cuddalore in Guardian OP No.93 of 2011, dated 25.04.2013, dismissing the petition filed by the appellant herein under Section 25 of the Guardian and Wards Act praying for restoration of custody of his minor daughter Arundhathi.

The brief facts of the petition are as follows :-

2. The appellant and the respondent are husband and wife and their marriage was solemnised on 14.11.2003. Due to their wedlock one female child by name Arundhathi was born to them. At the time of marriage, the appellant / husband was working as a Project Manager at Shasun Chemicals Ltd. Cuddalore and subsequently, he got a job at Vijayanagaram at Hyderabad. Hence, the appellant shifted his residence to Hyderabad and set up his family and lived there till April 2008. Once again in

the year 2008, the appellant got a job at Himachal Pradesh and due to which, he and his family members (including respondent wife) shifted to a place near Chandigarh. During their happy married life, the respondent / wife instigated the appellant / husband to help her parents to discharge their debts. He obtained loan over the house, which was owned by the respondent's parents. The parents of the respondent / wife also requested the appellant / husband to discharge their debts and they also promised to repay the money to the appellant. Accordingly, the appellant decided to discharge the debts of the parents of the respondent / wife and in connection, he paid a sum of Rs.4,38,000/- on various dates by way of cheque in the name of the respondent's mother Muthuvadivu. Likewise, the appellant/husband gave a sum of Rs.25,501/- for the education expenses of respondent's brother Vigneshwaran. When the appellant demanded repayment of the money, the respondent's parents offered the appellant to purchase their house and adjust the sale price towards the payment made by him. In view of the same, the respondent's parents, her brother, sister and the respondent / wife, jointly executed a sale deed on 18.02.2008 and sold the house to the appellant. Further the parents of the respondent / wife also resided with them and they promised to vacate the house after the appellant set up his family in Bhuvanagiri, Tamil Nadu. In the year 2008, when the appellant informed the respondent's parents about his decision to set up his family in the said house at Bhuvanagiri, the respondent acted indifferently. The respondent/wife also further made a demand that he should not ask her parents to repay the amount and the money that he gave to them may be treated as gift and he has to allow her parents to live in the house forever. When the said demand was not accepted by the appellant, the respondent/wife became more aggressive. In the year 2009, the respondent's father also came to Chandigarh and had a quarrel with the appellant and the respondent also quarreled and she left the matrimonial home without any reason along with her child on 23.03.2009 and thereafter, she has been living with her parents at Bhuvanagiri and never contacted the appellant.

3. Further it is the grievance of the appellant that the respondent / wife left the matrimonial home and took away all her jewels, silver articles including some documents, which were kept in the locker without the knowledge of the appellant. When the same was questioned by the appellant, the respondent gave a false complaint to the Social Welfare Officer, Cuddalore and accused the petitioner, his mother and his brother. She also threatened to initiate criminal action against the appellant. Hence, the appellant has filed an application for restitution of conjugal rights in HMOP No.6 of 2010 and the same is pending.

4. The respondent in the counter statement denied the entire facts stated by the appellant except for the matrimonial relationship and the parentage of the child. It is the contention of the respondent wife that when the parents of the respondent finalised the deal to sell the property to her father's friend A.Veeraraghavan for Rs.8,00,000/-, the petitioner husband compelled the respondent's father to sell the property to him for Rs.7,00,000/-. He has also consented to re-convey the house to the brother of respondent in future. It is the appellant, who permitted the respondent's parents and their family members to continue to live in their house as long as they want. The appellant also sent some money in piecemeal for paying LIC premium amounts due to him and likewise, he sent some money to the respondent's father for the purchase of two vacant plots in the name of the appellant. The father of the respondent also executed the sale deed in favour of the appellant without receiving full consideration. It is the petitioner, who did not allow the respondent to go to the relatives function and he often ill treated the respondent wife by scolding her in filthy language, due to which the respondent suffered mentally and physically. The appellant threw the respondent and the child from house without allowing her to take even her clothes from the house so also the sridhana articles, which were given to her at the time of her marriage. It is the averment of the respondent / wife, that the petitioner is always shifting his residence throughout the country and, therefore, he is not able to provide good attention and care to the female child. Further, the petitioner is also addicted to alcohol having abnormal behaviour and is a sadist and he cannot do anything for the welfare of the child. In the best interest of the female minor child, continuation of the child to live with her mother would be in the all round interests of the child.

5. It is the further contention of the respondent/wife, that as per the counter statement filed in CR .M.P. No. 1823 of 2011, the husband is an unemployed and he is unable to pay any maintenance amount to the respondent. It is further stated that the minor child is studying in the Kamaraj Matric Special School since returning from Chandigarh and that the appellant/husband had scolded and threatened the school authorities to remove the child from the school, therefore, the continuance of custody of the minor child Arundhathi, with her mother would be beneficial for the welfare of the child.

6. After examination of both the petitioner / appellant herein and the respondent and also verifying the documents, the court below has given a finding that the petitioner husband is not in a position to act in the capacity of a legal guardian for the child for many reasons. The trial Court has also given a

finding that the petitioner has no sufficient capacity to maintain the child and even his self-maintenance is in doldrum and, therefore, it would not be conducive for appointing him as a guardian and, accordingly, dismissed the said petition. Aggrieved by the same, the husband has preferred this appeal.

7. Heard both sides and perused the documents available on record.

8. On perusal of averments made in the petition, as well as in the counter statement, it is observed that after the marriage of the petitioner / appellant with the respondent in the year 2003, they lived together in various places and till 2008 and lastly at Chandigarh. There was some misunderstanding between the appellant/ husband and the respondent / wife with regard to the disposal of their house property as per the averment stated by both. It is also noticed that there is some misunderstanding and grievance over the property, which is also one aspect for the difference of opinion between the appellant and the respondent. It is the averment of the appellant that he has spent so much of money for the welfare of the parents of the respondent/wife in the discharge of their debts. When the amount was demanded by him, they suggested him to take the property by way of sale and the said amount which he contributed can be adjusted towards the same. It is the grievance of the appellant / husband that as per their request only, he allowed his wife's parents to continue to reside in the said house, which he purchased from them, but when he asked to vacate the house, they acted indifferently. The appellant's wife also demanded the husband to gift the said house to her parents. Since, the appellant neglected the request as he had invested his hard earned money, which he earned for his future life and for well being of his family, his wife/respondent on her own accord, left the matrimonial home on 23.03.2009 without informing to the appellant.

9. On the other hand, it is submitted by the respondent that the said house was owned by her parents and sold to the appellant / husband without getting full consideration and further stated that they were not treated cordially by her husband and she was driven away from the matrimonial house by the appellant. Hence, the child Arundhathi is all along with the respondent wife from her birth and she is also studying in the school with the care and custody of the respondent wife. It is also observed from the facts and evidence as stated by both the appellant and the respondent that there is misunderstanding between them due to the money transaction.

10. It is also seen from the averment made by the respondent that in the connected proceeding the appellant / husband admits that he is a job less person and searching for a job he is unable to provide any assistance to his wife and also child. It is also observed that the appellant husband has given his entire savings for the purchase of the said property, but he has been deprived of living in the said house by the respondent and her parents. Further, it is seen that the appellant's mother is depending upon him and he is being fed by his brother out of mercy. As per his own admission that he is jobless person and further circumstances that he himself is depending on his brother cannot take the guardianship of the minor child and to give her good education and secured life.

11. It is the argument advanced by the respondent that she is a MCA graduate and now she is very much living with the support of her parents and she is in a better position to pay more attention towards future life of the minor child. Moreover, the appellant is involving in religious activities.

12. It is also vehemently argued by the respondent that the child being a girl, though she lost the love and affection of the father, it would be better for the minor child to stay with her mother, who can bestow all care, love and affection and the timely need when the girl child attains majority. Whatever the affection and care provided by the father, a mother can alone be a good companion and friend to a girl child at the stage of her maturity or puberty. Hence, it is very unsafe to remove the custody of the child from the respondent, who is living with the companion and financial support and love of her parents.

13. In view of the above discussions and considering the fact that the appellant/husband, who claims the guardianship of the minor child is not even possessing minimum financial status to provide the needs of the minor child, this Court is of the opinion that, it is very unsafe to handover the custody of the minor girl child to the appellant. Hence, this Court find no reason to interfere with the decision taken by the trial Court. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

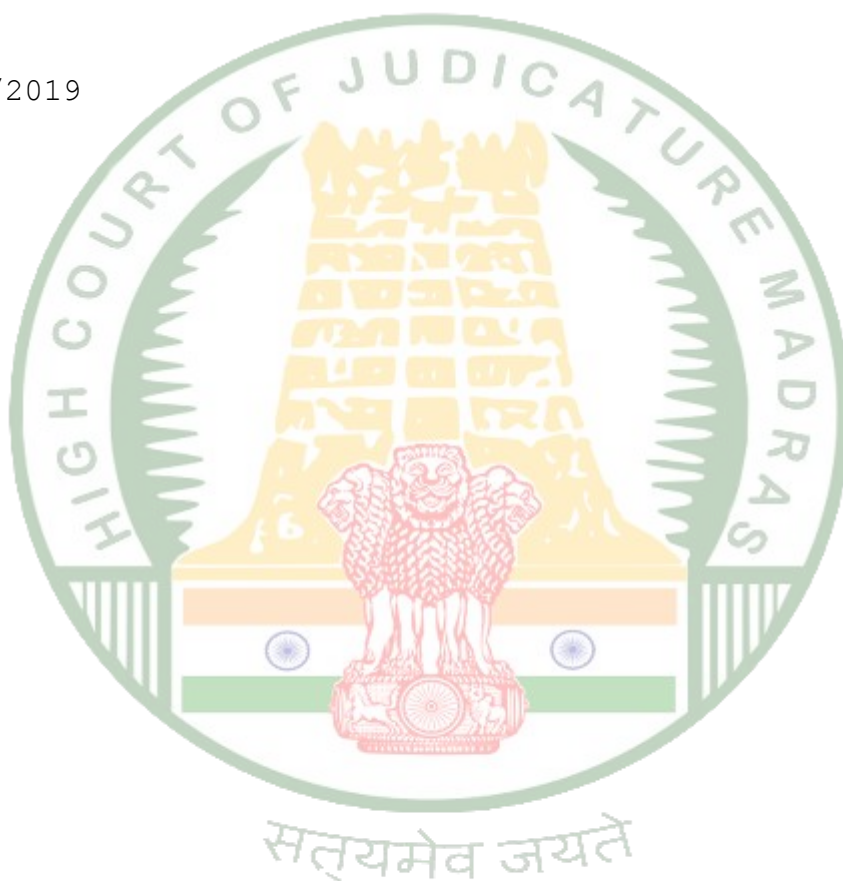
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To

The Principal District Judge,
Cuddalore.

CMA No.2811 of 2013

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