

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.07.2018	Delivered on 13.07.2018
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CORAM

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Original Side Appeal No.180 of 2018
and
CMP No.9177 of 2018

Sivagowri Appellant

Vs.

D.Harikrishnan ...Respondent

Prayer : Original Side Appeal is filed under Order XXXVI Rule 1 of the O.S. Rules read with Clause 15 of the Letters Patent to set aside the order dated 10.04.2018 made in Application No.6917 of 2017 in O.P. No.877 of 2017 and allow the Original Side Appeal.

Prayer in OP.877 of 2017:

Original Petition filed Under order XIV Rules of O.S Rules r/w section 12 of the Guardian and Wards Act 1890 and order 39 Rule 1 of C.P.C, praying this court to pass an order directing the respondents to direct the evaluation of the minor child Niharika Harikrishnan born on 11.01.2010, by any Clinical psychotogist to be nominated by this court;

For Appellant : Mr.R.Sankarasubbu
For Respondent : Ms.S.P.Arthi

JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH., J.)

This Original Side Appeal is directed against the interim order dated 27.04.2018 passed in O.P. No.877 of 2017, wherein, the learned single Judge directed the appellant to hand over the custody of the minor child to the respondent for 15 days from 01.05.2018 to 15.05.2018.

2. The appellant is the grandmother of the minor child and the respondent is the father of the minor child. The respondent filed the Original Petition for permanent custody of his minor daughter. His wife Anitha Hari Krishnan, was diagnosed with cancer in the year 2011 and inspite of providing her with the best of treatment, she died on 04.11.2017.

3. Pending the above said Original Petition, the respondent filed A.No.6917 of 2018 seeking for interim custody of the child. The respondent, the deceased mother and the minor child were staying together till October 2017. Subsequent to the death of the mother, the appellant took the custody of the minor child and was not allowing the respondent to meet the child.

4. During the pendency of the Application, several attempts were made by the Court to resolve the issue. But however, the attempts did not succeed. The appellant continued to have custody of the child and when this Court had referred the minor child to a Psychologist, the report of the Psychologist revealed that the child is tutored by the appellant and there was a clear indication that Parental Alienation Syndrome was thrust upon the child. As a result, a gap developed between the respondent and his minor daughter leading to strain in relationship.

5. The learned single Judge taking into consideration the age of the minor girl and also the attitude of the appellant in not allowing the respondent to even meet the child, thought it fit to grant custody of child during week ends to the respondent. For this purpose, the learned single Judge also appointed an Advocate Commissioner who will hand over the child to the respondent in the Madras Bar Association (MBA), High Court Campus, Madras, every Friday at 5.00 p.m. and respondent after keeping the child for the week end would return the child back to the appellant at 6.30 p.m. every Sunday. Even this attempt did not fructify, since the appellant was creating a scene and was not agreeable for anything. This fact has been recorded at Paragraph 4 of the order of the learned Single Judge.

6. The learned single Judge after taking into consideration the entire facts and circumstances of the case passed an order on 27.04.2018 to the effect that the respondent shall be given custody of the child for a period of 15 days from 01.05.2018 to 15.05.2018 during the vacation time and the police was also directed to give adequate protection to the respondent.

7. The appellant without complying with the above said interim direction, has chosen to file the present appeal against the order of interim direction passed by the learned single Judge.

8. When this appeal came up for hearing before us, we directed the matter to be posted in the chamber in order to make an attempt to resolve the issue. When the matter was posted in the Chamber on 19.06.2018, we had a open discussion with the parties and passed the following order.

" Learned counsel appearing for the parties are present before this Court. After having wide discussion with the parties, we are of the view that the appellant shall make sure that the respondent have the custody of the child on 29.06.2018 between 3.30 p.m. And 5.30 p.m. We also make it clear that interaction shall be restricted only between the child and the respondent and thus the appellant shall never be in the near vicinity. The same condition will be applicable to the learned counsels for the parties as well.

Post the matter for further hearing on 02.07.2018."

9. On 29.06.2018, when the respondent came to visit the child in the Mediation and Conciliation Centre at High Court, Madras again the situation was created by the appellant. As a result of which, the meeting did not go on as expected.

10. The matter was again posted on 03.07.2018, in the chamber with a specific direction to the parties to come along with the child. However, neither the appellant nor the child turned up on the said day. We, therefore, thought it fit to hear the matter on merits and dispose of the appeal.

11. The learned counsel for the appellant would submit that the learned single Judge did not take into consideration the welfare of the minor child and had granted interim custody against the wishes of the child. The learned counsel further contended that the child was living comfortably with the appellant/grandmother right from the time her mother expired and it will not be in the interest of the child to separate her from the grandmother. The learned counsel further contended that at the best, the learned single Judge should have granted only visitation rights and should not have ordered for interim custody of the child.

12. The learned counsel for the respondent would submit that till October 2017, the father, mother and the child were living together and the child was very much attached to her father. After the demise of the mother, the appellant started retaining the custody of the minor child and was preventing the father even to meet the child. The learned counsel further contended that the appellant was tutoring the child and was widening the gap between the father and the child and was making all attempts to strain the relationship. The learned counsel would submit

that such attitude of the appellant is not in the welfare of the child and the father being a natural guardian cannot be prevented from having the custody of the child. All attempts that were made by the Court to resolve the issues ended up as a futile exercise due to the adamant attitude of the appellant. The learned counsel, therefore argued that there is no ground to interfere with the interim order passed by the learned single Judge and the above appeal has to be dismissed.

13. This Court carefully considered the rival submission made by the counsel on either side and also the materials that have been placed on record. It is an admitted fact that the father, mother and child were staying together till October 2017 and the child had absolutely no problem with the father. Unfortunately, the mother died due to cancer on 04.11.2017 and the whole scenario changed thereafter. The child went into the custody of the appellant who is the grandmother.

14. A careful reading of the learned Single Judge clearly shows that the child has been tutored by the appellant and an attempt has been made to strain the relationship between the minor child and her father. The untoward incidents that happened when the respondent wanted to take the child during week ends, pursuant to the orders passed by the learned single Judge, also exhibits the attitude of the appellant. We also tried to talk with the parties in order to resolve the issue, but however, we are able to see that the appellant is not willing to give up the custody of the child and does not want the respondent to even visit the child or re-establish the relationship with the child.

15. The respondent is the natural guardian of the minor child. Unless and otherwise a very strong ground is made out against the respondent for not granting interim custody of the child, as it will go against the welfare and interest of the child, we do not think that it will be proper to deprive the respondent who is after all the father to have interim custody of the child.

16. The learned counsel for the respondent also made it very clear before the Court that he does not want to prevent the child from having the love and affection from her grandmother and the grandmother/appellant herein is at liberty to visit the child at any time. It has also been brought to our notice that the learned single Judge has implemented the order and handed over the interim custody of the child last week to the respondent and has posted the case for further hearing on 19.07.2018. On that day, the learned single Judge has also directed the child to be produced before the Court.

17. We are of the considered opinion that the learned single Judge has passed the order dated 27.04.2018, after considering the entire facts and circumstances of the case. The learned single Judge has taken into account the welfare of the child and the interim custody was granted only with a view to re-establish the relationship between the father and daughter. The subsequent development that has taken place which has been referred to herein above, was also taken into consideration by this Court. At this stage, this Court does not want to interfere with the order of the learned single Judge and does not want to disturb the present status quo. The learned single Judge has directed the child to be brought before the Court on 19.07.2018, in order to ascertain the development in the relationship between the respondent and the minor child. We do not wish to interfere at this crucial stage and pass any order in this appeal.

18. We therefore find no merits in this Original Side Appeal and consequently the same stands dismissed. In the facts and circumstances of the case there will be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

rkp

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The Sub. Asst. Registrar
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Madras.

+1cc to M/s.S.P.Arthi, Advocate sr.no.46335

Pre-Delivery Judgment
in
Original Side Appeal No.180 of 2018
and
CMP No.9177 of 2018

ppa (co)
nr 27/06/2018