

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

O.S.A.No.88 of 2016
and
C.M.P.No.5529 of 2016

S.Saravana Kumar Appellant/Respondent

Vs

B.Latha Respondent/Petitioner

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w
Clause 15 of Letters Patent against the order of this Court
dated 20.01.2016 made in O.P.No.368 of 2014, filed to

(i) appoint the Petitioner as guardian of the person of the
minor child S.Varshiha and

ii) grant the custody of minor child S.Varshiha to the
petitioner from respondent

For Appellant .. Mr.C.P.Sivamohan

For Respondent .. Mr.M.A.Muthalakan

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant is the husband of the respondent. The respondent filed a petition under Guardian and Wards Act, 1890 claiming custody of the minor child. After consideration of the proof affidavit filed and the evidence adduced by the parties, the learned single Judge was pleased to allow the petition filed, giving liberty to the appellant to take the child once in two weeks without disturbing her studies. Challenging the same, the present appeal has been filed.

2.Learned counsel appearing for the appellant submits that the respondent deserted the matrimonial home. The child was living with the appellant till such time. There was a divorce

petition filed in which the respondent was set exparte. Thereafter, she filed a petition to set aside the exparte decree, which is stated to be pending. Even the order of the learned single Judge is not being complied with by the respondent. Hence the appeal requires to be allowed.

3.Learned counsel appearing for the respondent submits that the child was born on 09.04.2011. She being the female child, the learned single Judge rightly allowed the petition filed. It is the appellant who was not willing to come and take the child. He further submits that the respondent has got no objection in complying with the order of the learned single Judge. The child is very comfortable with the respondent. It is not correct to state that the respondent went away from the matrimonial home on her own volition. Thus, no interference is required.

4.We are concerned with the paramount interest of the child. Even before this Court, mediation efforts were made. It appears that as of now, the child is comfortable with the respondent. The child is at tender age viz., 7 years. Therefore, we do not find any error in the order passed by the learned single Judge in holding that the child needs care of the mother more. The learned single Judge also recorded the factum that the appellant is residing with his parents at Jayamkondam. Now, the child is studying at Chennai.

5.In such view of the matter, we are not inclined to interfere with the order of the learned single Judge. However, we make it clear that it would be in the interest of the parties including the child that the respondent should have the custody as ordered by the learned single Judge. Though the learned counsel for the respondent submits that the respondent is ready and willing to comply with the order of the learned single Judge, we direct the respondent to make sure that the same is done without fail as and when the appellant makes a request in tune with the order passed.

6.With the above said observation, the original side appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

To

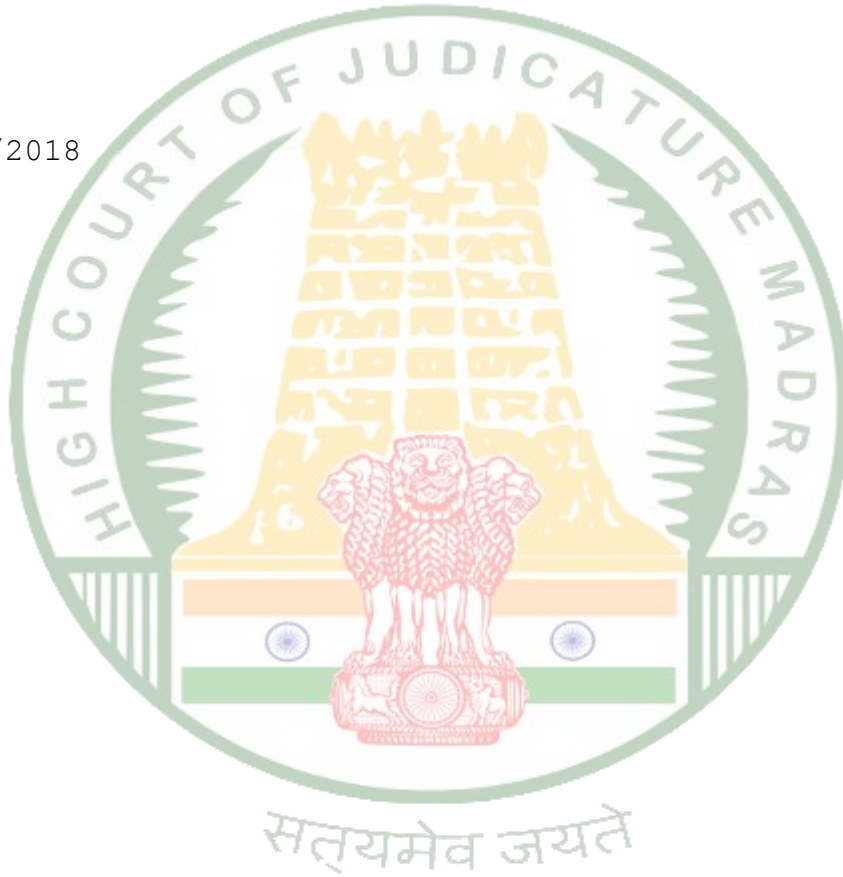
The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.D.Kumaralingam, Advocate Sr.81517

+1cc to Mr.M.A.Muthalakan, Advocate Sr.81327

O.S.A.No.88 of 2016

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