

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.04.2018	Delivered on: 20.09.2018
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THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.3016 of 2013
and
M.P.Nos.1 and 2 of 2013

Chitra Appellant/Petitioner/Mother

Versus

Devaraj Respondent/Respondent/Father

Appeal filed under Section 47 of Guardian and Wards Act,
against the fair and final order dated 18.07.2013 passed in
G.W.O.P.No.118 of 2013 on the file of Family Court, Coimbatore.

For Appellant : Mr.A.Thiyagarajan

For Respondent : Mr.R.Sankarappan

JUDGMENT

This Civil Miscellaneous appeal has been preferred
against the Order passed in G.W.O.P.No.118 of 2013 on the file
of the Family Court, Coimbatore. This G.W.O.P.No.118 of 2013 was
filed by the appellant/petitioner under Sections 8 and 9 of the
Guardian and Wards Act to declare appellant herein/ petitioner
as the guardian of the minor children namely Mithra Shreeya and
Mithul Jeshna.

2.The brief facts of the case are as follows: The marriage
between the appellant/petitioner and the respondent, who
is none other than her mother's paternal uncle's son, took place
on 04.11.2001 at Kerala in Guruvayur Sree Krishnan Temple
according to Hindu Customs and Rituals. After the marriage, the
appellant/petitioner gave birth to twins viz one male and one
female baby on 03.11.2007 and it was suggested that since twins,
male and female babies were born, the birth of female baby is
not good for the family according to astrology. Hence the
respondent had suggested to retain the male baby and give the
female baby in adoption. The respondent did not take the
appellant/ petitioner and the children to his home from the

hospital. The suggestion to give the female child in adoption was not consented by the appellant/petitioner which resulted in filing of Divorce petition before the Court. Now, the appellant/petitioner and the children are living with constant threat by the respondent, who often gives trouble to the appellant/petitioner and tries to take away the children. On 10.10.2011, the respondent came to the school and tried to snatch the children from school. Hence, the petitioner has to file this G.W.O.P on the ground that though the respondent is natural guardian, he has not taken care of the children.

3. The respondent in the counter statement has denied the averments made by the appellant/petitioner. It is also the averment of the respondent that after marriage, the appellant/petitioner never stayed in the matrimonial home at Thimanaikenpalayam even for a week and when the demand for the petitioner for jewels was not able to be complied with by the respondent, who had already indebted because of the treatment expenses and also by the purchase of Maruthi Car and two wheeler, the appellant/petitioner and her mother refused to accommodate the respondent in the house. Even, the respondent was prevented from seeing the children and the school correspondent also refused to permit the respondent to meet the children under the instructions of the appellant/petitioner. Hence, the respondent has stated that in the development of the children welfare, the participation of the respondent is also necessary. Hence the appeal filed by appellant/petitioner is to be dismissed.

4. The Trial Court after analysing the evidence and documents placed before it, has discussed elaborately the rights and responsibilities of both parties and also the relationship of the parties, by analysing number of case laws. Though, the claim of the petitioner to appoint her as guardian was dismissed, the Court below had handed over the custody of the children to the petitioner/mother. On the side of the respondent, the visitation right was sought for and the visitation right of the respondent was ordered.

5. During the pendency of this Civil Miscellaneous Appeal, a memo has been filed by the appellant, who is the petitioner in G.W.O.P.No.118 of 2013, stating that she is ready to produce the minor children Mithul Jithnu and Mithra Shreeya. The respondent accepted to have a visit of the children in the house of common relative of one Mr.Damodharan who is none other than the brother of the respondent Devaraj on every Sunday from 2.30p.m to 5.30 p.m, once in a week for the respondent to spend time with the children and that for the safety of the children, an assurance should be given by the respondent. Regarding the same, the respondent also made an endorsement in the memo.

5. Recording the terms that has been arrived at by both the appellant/petitioner and respondent as stated in the memo, this Civil Miscellaneous appeal is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

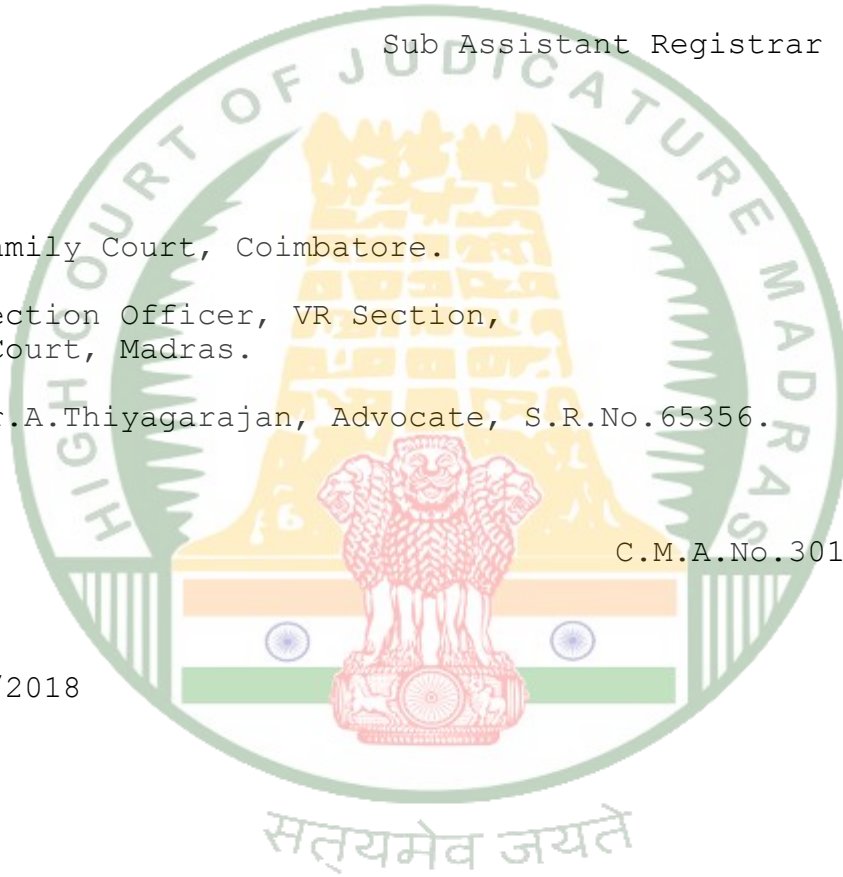
1. The Family Court, Coimbatore.
2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.A.Thiyagarajan, Advocate, S.R.No.65356.

C.M.A.No.3016 of 2013

AD(co)

rrs 25/09/2018



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