



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2018

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.914 of 2014

and

M.P(MD)No.1 of 2014

Vijayakumar

... Appellant/Petitioner

vs.

1)Tmt.Baby Babu

2)Thiru.Babu

... Respondents/Respondents

Appeal filed under Section 47 of the Guardians and Wards Act, to set aside the judgment and decree passed in GWOP.No.123 of 2008 dated 16.07.2010 on the file of the Court of District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.S.C.Herold Singh

For Respondents : Mr.K.N.Thampi

JUDGMENT

The present appeal has been filed by the appellant/father of the minor child namely, Mekar Vijay against the dismissal of his petition filed under Section 7(b) of the Guardian and Wards Act, 1890, for declaring himself as guardian of his minor child who was born on 21.12.2004. The respondents are the maternal grandparents of the child.

2.The case of the appellant is that he married the respondents' daughter one Anitha on 03.04.2003 and out of the wedlock, the minor child was born on 21.12.2004. After marriage, on account of his job, the appellant went to abroad on 28.07.2003 and returned to India on 01.07.2007. During that period, the deceased Anitha and the minor child were under the care and custody of the respondents herein. The case of the appellant is that when he was in abroad, he came to know that his wife was suffering from Meningitis and she died on 24.06.2007 and within a few months of the death of Anitha, the appellant re-married one Sheeba on 17.03.2008. The appellant had claimed that the respondents would be unable to fulfill the basic needs and expectations of the minor child and he is in a position to provide the same to the child. He would also state in the GWOP that the respondents forcibly took the minor child from his custody.



3. The case of the respondents is that the appellant is working in a foreign country living with his second wife Sheeba and within three months of marriage with the deceased Anitha, the appellant sold all the jewels of the deceased Anitha and did not care to send any money either for maintenance or for other expenses and in fact, the respondents had taken care of Anitha and her minor child. It is the case of the respondents that since the appellant did not care for their daughter, with their own money, they purchased a land measuring about 8½ cents in the name of their daughter and after the death of the said Anitha, though the minor son is entitled for the said property, the appellant sold the same to his brother Sekhar without getting permission from the Court and therefore, a case was filed in O.S.No.210/2008 on the file of the Principal District Munsif, Padmanabhapuram, for maintenance and injunction and only as a counter blast, the above GWOP was filed.

4. In the GWOP, the appellant has been examined as PW1 and the 1st respondent has been examined as RW1. It is an admitted fact that the child is under the custody of the respondents. The evidence of PW1 shows that he has sold the property belonging to the deceased Anitha to his brother Sekhar and he had also stated that he would deposit the sale proceeds in the minor's name, but he did not do so and from the beginning, the appellant had never taken care of the child and since the respondents have filed a case in O.S.No.210/2008 as a counter blast, the appellant has filed GWOP.No.123/2008. According to the respondents, the appellant is not interested in the welfare of the minor and the learned Judge has elaborately discussed the same and dismissed the petition filed by the appellant and therefore, the interference of this Court is not necessary.

5. Perusal of the records shows that when the minor was produced before the lower court on 03.06.2010 as per the directions of the Court below, the child refused to go along with the appellant. Since the minor child is now almost 14 years old, this Court directed the parties to be present before this Court. The minor boy expressed his unwillingness to go along with his father. The boy had aversion towards his father and he wanted to live only with the respondents who are the maternal grandparents.

6. In my considered view, any change in the custody of the child would only affect the mentality of the child. It is the settled law that in the matter of GWOP cases, welfare of the child is paramount and not the legal rights of the parties. Though the appellant had stated before the Court below that he was prepared to deposit the entire sale proceeds in the name of the child, that has not been done till today. Considering the totality of the circumstances, this Court is of the view that the order passed by the Court below need not warrant any interference.



Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The District Judge,
Kanyakumari at Nagercoil.

+1cc to Mr.S.C.Herold Singh, Advocate, SR.No.68611.

+1cc to Mr.Thampi, Advocate, SR.No.68572.

CMA (MD) No.914 of 2014

18.06.2018

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