

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.120 of 2017

27.11.2018

Between:

J.Amarnath

..Appellant

and

Mekala Lalitha and others

..Respondents

Counsel for the appellant: Mr.N.Rishi Kumar
for Mr.N.Ashok Kumar

Counsel for the respondents: Mr.G.Vasantha Rayudu

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Feeling aggrieved by order and decree, dated 06.12.2016, in G.W.O.P.No.11 of 2014 on the file of learned IX Additional District Judge, Wanaparthy.

2. We have heard Mr.N.Rishi Kumar, learned counsel for representing Mr.N.Ashok Kumar, learned counsel for the appellant, and Mr.G.Vasantha Rayudu, learned counsel for the respondents.

3. The appellant and respondent No.3, who were man and wife, were blessed with a female child. As their matrimonial life fell into rough weather, they got separated legally through a decree of divorce. The appellant filed G.W.O.P.No.11 of 2014 seeking the custody of the minor child, who is stated to be ten years old at present. The Court below summoned the minor child and based on her preference, dismissed the G.W.O.P. conferring the visitation rights on the appellant. The observations recorded by the Court below on the capacity of the minor child to understand the things of her choice are reproduced hereunder.

“The child has come to my chambers and I have posed several questions to her to know about the situation. To my surprise, the child has answered the questions in such a matured way where a grown up child alone could answer such questions. Even I have appraised her about her situation in the house without her father, but the child has boldly stated that she prefers her mother (third respondent) than her father, though her mother is pregnant by her second husband namely Vijaya Bhasker. The child did not make any complaints against her step father i.e., Vijaya Bhasker and she said that she is happy with him. The child further stated before me that she considers her maternal grand parents as her parents and she is happily leading her life with them. Under these circumstances this Court remembered the said Jagdeep Singh’s case, in that case also a female child has expressed her wish to stay with her mother despite her knowledge of the unfortunate situation in the house. The Honourable Apex Court in that judgment gave custody of child to the mother. Therefore, keeping the factual situations in mind, this Court made the following order.”

4. The learned counsel for the appellant has submitted that respondent No.3 has been remarried and that she is living with her husband away from the appellant’s native place and the minor child was left in the company of respondent Nos.1 and 2 – the parents of respondent No.3

and the maternal grandparents of the minor child. He has further submitted that being the father and natural guardian, the appellant is entitled to the custody of the minor child.

5. The learned counsel for the respondents has submitted that even the appellant also got re-married and that for sound and cogent reasons, the Court below held that the interests of the minor child will be best served if she is allowed to be in the custody of respondent No.3.

6. The law is well settled that while deciding a dispute relating to the custody of a minor child, interests of the minor child are of paramount importance. The appellant has pleaded remarriage of respondent No.3 as the main ground for taking the custody of the minor child. If that be the reason, even the appellant is also disentitled to claim the custody of the minor child as he is also remarried. From the observations made by the Court below, it is evident that the minor child is matured beyond her age and that she expressed her willingness to be in the company of respondent No.3 – her mother and respondent Nos.1 and 2 – her grandparents. Even if due to the contingency of

respondent No.3 staying away from the native place of the appellant, the temporary custody of the minor child is with respondent Nos.1 and 2, the same cannot be treated as against the interests of the child and the same cannot be construed as respondent No.3 losing the custody of her child. Ordinarily, a female child prefers its mother rather than its father as it is the former, who understands its needs better and brings it up in a proper manner.

7. At the hearing, it has come out that the appellant has not even been paying the maintenance amount to the minor child in spite of the order of the Court. This itself would show that the appellant is not acting *bona fide* and his claim that he has love and affection for the minor child appears to be a make believe affair evidently, intended to deprive respondent No.3 of the custody of the minor child rather than his interest in the well being of the minor child.

8. For the aforementioned reasons, we do not find any merit in this Appeal and the same is, accordingly, dismissed.

9. As a sequel to dismissal of the C.M.A., I.A.No.3 of 2017 (C.M.A.M.P.No.199 of 2017) filed by the appellant for interim relief stands dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

27th November, 2018
GHN

