

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	24.09.2019
Pronounced On	03.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2601 of 2010

Lourdusamy

.. Appellant

Vs

Thavamani

..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 47 of the Guardians and Wards Act, 1980, to set aside the order and decree dated 16.07.2010 passed in G.O.P.No.89 of 2009 by the Learned Principal District Judge, Villupuram and allow the same.

For Appellant : Mr.S.Yoganathan for
Mr.K.S.Ganesh Babu

For Respondent : No appearance

J U D G M E N T

The appellant is aggrieved by the impugned order dated 16.07.2010 passed by the learned Principal District Judge, Villupuram in G.O.P.No.89 of 2009 rejecting the prayer of the appellant.

2.The appellant was married to the respondent on 25.05.2005 and through the marriage a son namely Dinesh Peter was born to them. However, on account of the matrimonial dispute between the appellant and the respondent got separated. Eventually, the appellant filed divorce O.P.No.40 of 2008 to dissolve the marriage solemnized between them. The respondent remained absent and was set exparte. The marriage was thus dissolved vide order dated 13.09.2008 in O.P.No.40 of 2008.

3.The appellant thereafter filed G.O.P.No.89 of 2009 for the following relief:-

(a)The respondent to produce the Dinesh Peter before

this Hon'ble Court on every hearing and allow to speak with the appellant.

(b) Direct the respondent to allow the Dinesh Peter to live with the appellant for two days a week.

(c) Granting such other just and necessary relief as the Hon'ble court may deem fit and proper in the circumstances of the case.

4. It is noticed that before the lower court, the appellant had filed 5 Exhibits and examined himself as a witness. The respondent had remained absent.

5. As far as, (a) of the above reliefs is concerned nothing survives. Now the appellant seeks for a limited prayer for allowing the minor child to stay with the appellant for two days a week.

6. The Principal District Court, Villupuram has dismissed the G.O.P.No.89 of 2009 with the observation that if at all the appellant indeed loved his child nothing prevented him for filling an application along with O.P.No.40 of 2008 and he has merely filed a copy of the panchayat agreement allegedly dissolving the marriage vide P.W.5 which was not basis on which filed the G.O.P.No.89 of 2009 and therefore, the said application was dismissed.

7. It is noticed that in the petition filed for dissolution of marriage, the respondent had remained absent. Therefore, the marriage was dissolved by the lower Court. Though, in G.O.P.No.29 of 2009 also the respondent remained absent, the lower court has dismissed it on merits.

8. Despite the service of notice to the respondent in the present Civil Miscellaneous Appeal and name being printed in the cause list, there is no representation for the respondent.

9. I have considered the arguments advanced by the learned counsel on behalf of the appellant.

10. The marriage between the appellant and the respondent was solemnised on 25.05.2005 and a son was born to them. At the time of filing the G.O.P.No.89 of 2009, the minor son was 4 years old. Now another 10 years lapsed. Therefore, it would be unfair to expose the child to the appellant.

11. Therefore, I am of the view that the appellant is not entitled to custody of the child as prayed in the present Appeal. I do not find any merits to interfere the order of the learned Principal District Judge, Vilupuram. Accordingly, the present Civil Miscellaneous Appeal is dismissed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

Jen

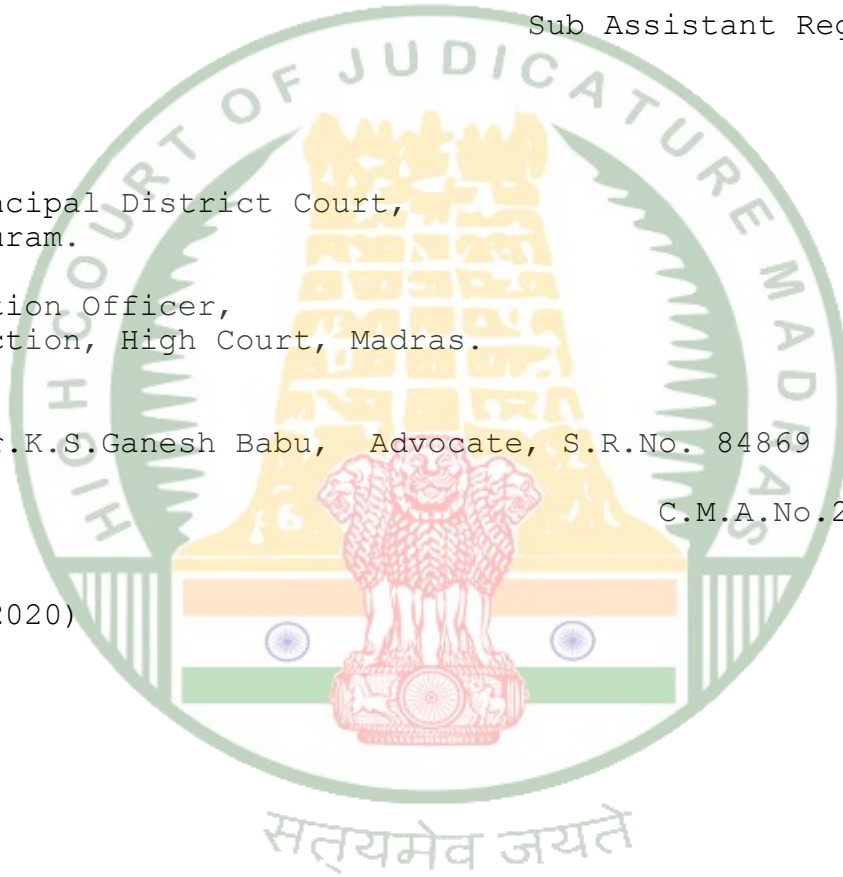
To

1. The Principal District Court,
Villupuram.
2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr. K.S. Ganesh Babu, Advocate, S.R.No. 84869

C.M.A.No.2601 of 2010

BP (CO)
GN (09/01/2020)



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