

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23.08.2018

Judgment Pronounced on : 01.02.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.1513 of 2016
and CMP.No.11574 of 2016

Rajammal ... Appellant/2nd Respondent

Vs

S.Ananthanarayanan ... Respondent/Petitioner

Prayer :- Civil Miscellaneous Appeal filed under Section 47 of Guardians and Wards Act, 1890, against the judgment and decree dated 05.04.2016, made in G.O.P.No.39 of 2014 on the file of the Principal District Judge, Krishnagiri.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.E.Kannadasan

JUDGMENT

A duel is for the custody of a child between the father of the child and latter's mother-in-law, the maternal grandmother of the child. The father of the child had succeeded before the trial Court and hence, his mother-in-law, in whose custody the child is, has come before this Court.

2. The brief facts are :

- The appellant's daughter is Chitra and on 31.08.2011, she married the respondent. On 11.05.2012, they gave birth to a male child, and named him Gurucharan. Chitra was a post-graduate and has been prosecuting her masters degree in education. While so, on 17.03.2013 at about 5.30 a.m., Chitra had fallen in a well and died. The respondent/petitioner is serving in the defence service, and at the time when Chitra died, he was posted in Uttar Pradesh. On coming to know of his wife's demise, the respondent herein rushed to the village where the calamity took place. In the meantime, police had registered a case in Crime No.124/2013, which at the

instance of the appellant and her husband, later came to be altered into one under Section 498-A and 306 IPC. On arrival of the respondent/petitioner to his village, he was arrested, following which the appellant along with her husband and their henchmen had trespassed into his house and taken away the jewels, cash, motorcycle and other house-hold articles given to the appellant's daughter Chitra at the time of marriage. Most critically, they have also taken away the minor child, who was barely 10 months old at that relevant time.

- The respondent being the father of the child and natural guardian, is entitled to have its custody. He is in a better position to give emotional support to the child, and to educate the child in a better environment.

3. The respondents, who were originally arrayed in the petition are the parents-in-law of the respondent herein. Of them, the respondent's father-in-law, the husband of the present appellant died during the pendency of the trial proceedings. In their counter, it is alleged that couple of days prior to Chitra's death, the respondent herein had telephonically insisted his father-in-law, since dead, to pay Rs.80,000/- to Chitra towards fee for her higher studies as a loan. Further, the respondent had always suspected his wife and treated her with considerable cruelty. At no time, he has attempted to care the child nor has visited him.

4. Before the trial Court, the petitioner has examined himself as P.W.1 and besides, he examined three other independent witnesses. For the respondents, the first respondent, who is since dead was examined as D.W.1.

5. On appreciating the evidence before it and relying on the various authorities of this Court, which underscored the need to grant paramount consideration to the welfare of the child and the Court below has granted custody to the respondent herein and allowed the petition. Challenging the said order, the appellant is before this Court.

6. The matter came before this Court on 22.06.2018. Since this Court considered that the child is granted adequate care from both his father as well as from his maternal grandmother (appellant), it encouraged them to resolve the matter amicably. Pursuant to the same, some strategies too were put in place, but

the distrust between the parties appeared to have continued. In the meantime, the Court has also heard and reserved the matter for pronouncing its Orders, but waited for the parties to build mutual and lasting trust, all with a view to respect the child as living being and not as chattel in order both sides realised it too. In the end the wait was wasted.

7.1 It is an admitted fact that the respondent, being the father of the minor child, and is its natural guardian, is necessarily entitled to have custody of the child, and if it has to be denied, then there shall exist strong reasons, all of which should have been proved to create a preponderating probability of their existence. If viewed from this angle, all that this Court see is a set of allegations: First, is that the respondent had been treating his wife Chitra with cruelty. The details are not available pertaining to it. It is amazing how someone in the Armed Services and working most times outside his home town would be able to commit physical cruelty on his wife. This allegation in the written statement appears highly exaggerated. The second, there is an allegation about the respondent herein requiring his father-in-law to pay Rs.80,000/- towards fees for his wife's higher studies. The counter adds that the petitioner had promised to return the sum later. What is there in it to deny the respondent the custody of the minor child? This, on the other hand shows that the petitioner had been loving his wife and that he had only wanted a loan to support his wife's higher studies. If only, he were to treat his wife with cruelty and that too on the ground of suspicion over her fidelity, would he have ventured it?

7.2. All the allegations in the counter appear to be tailored for denying the respondent his just right to have the custody of his child. Admittedly, the respondent is in the Armed Services. He is young, and if he does not care the child, who else will be? And does not the child require the emotional support of his father. It will be cruel, if the child, which has unfortunately lost its mother's support and the emotional comfort which only a mother can give, is also denied the emotional support of his father. Given the totality of the facts and circumstances, this Court considers that the father of the child would be ideally suited to take care of the child and that the welfare of the child will be better secured if the child is in his custody. The learned District Judge has been correct in her approach in assessing the materials before her, when she allowed the respondent's prayer for custody of the child in G.O.P.No.39/2014.

8. In the result, this appeal is dismissed and the appellant is directed to hand over the custody of the child to the respondent, immediately after the examination of the child and at any rate latest by 01.05.2019. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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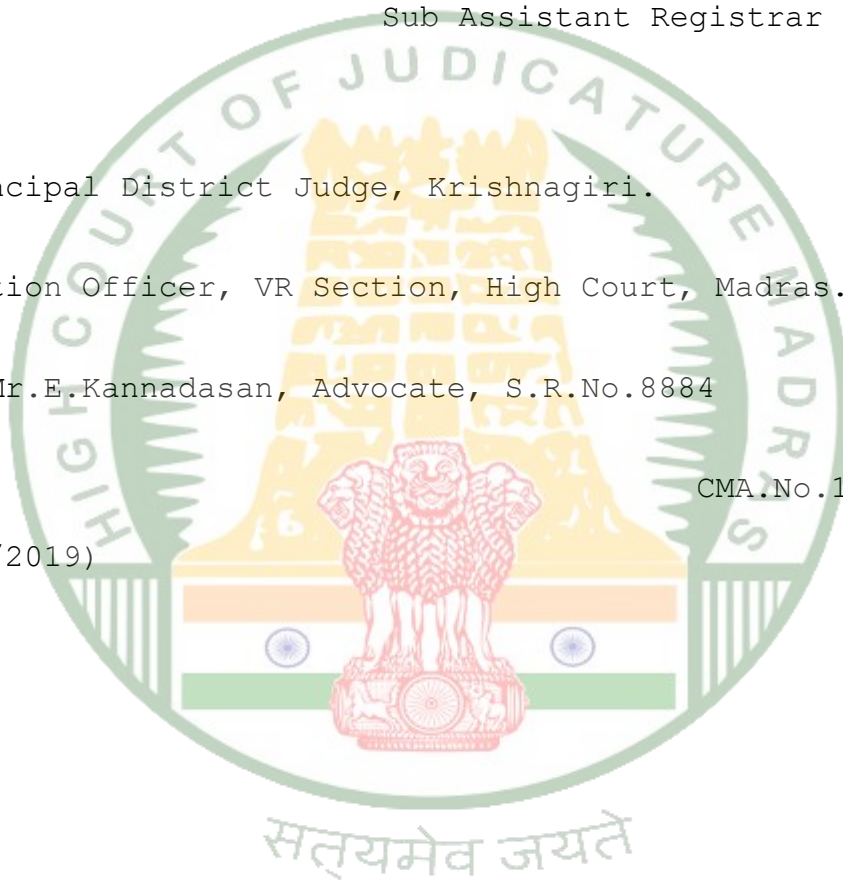
1.The Principal District Judge, Krishnagiri.

2.The Section Officer, VR Section, High Court, Madras.(2 copies)

+1 cc to Mr.E.Kannadasan, Advocate, S.R.No.8884

Judgment in
CMA.No.1513 of 2016

KK(CO)
SSM(15/02/2019)



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