

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. No. 2255 of 2016

K.M. Anbalagan

... Appellant

Vs.

Banupriya

...Respondent

Prayer:-Appeal filed under Section 47 of the Guardian and Wards Act, 1890 against the judgment and decree dated 16.06.2016 made in G.W.O.P.No.12 of 2014 on the file of the Family Court, Erode.

For Appellant : Ms.Shase for
Mr.M.Guruprasad

For Respondent : Mr.K.Selvaraj

JUDGMENT
(Delivered by M.M.Sundresh, J.)

The appellant is the paternal grand father of the minor child. The respondent is his daughter-in-law. Unfortunately, the son of the appellant died, who is incidentally the husband of the respondent. Now, the child is about nine years old. Seeking custody of the child, the appellant filed G.W.O.P.No.12 of 2014. In the mean while, the respondent got remarried and from the wedlock a child was born. It appears that the minor child, whose custody is sought for by the appellant, is in the custody of the maternal grandparents. Therefore, we take it that the child is in the custody of the respondent.

2. Learned counsel appearing for the appellant has submitted that the means of the appellant to take care of the child is proved as against that of the respondent. The respondent has since remarried and is having a child. The child is actually in the custody of the maternal grandparents. Therefore, considering the same, appropriate orders should be passed.

3. Learned counsel appearing for the respondent submitted that it is not correct to state that the child is in the custody of the maternal grandparents as, in fact, the child is in the custody of the respondent. The Court below has given the visitation rights. At the time of filing the petition, the child was at tender age and now he is of nine years old. He may not be comfortable with the appellant at this stage. Therefore, the petition will have to be rejected.

4. We are concerned with the interest of the child. The fact that the appellant also is in a good position to take care of the child is not in dispute. For the growth and development of the child, healthy relationship between the appellant and the child is very important. However, we do not wish to disturb the present custody of the child. After all, the child has been in the custody of the respondent or her parents, as the case may be, for nearly nine years.

5. As stated above, for the holistic development of the child, there has to be a better relationship between the paternal grandparents and the child. This will happen only when the child is allowed to be in the custody of the appellant at least for a day in a month. After all the relationship between the grandchild and the grandparents is a special one and grandparents wield incredible influence on them, which would be remembered over the years.

6. In such view of the matter, we are inclined to modify the order passed by the Court below by directing the respondent to handover the custody of the minor child in favour of the appellant on the first Sunday of every month. We make it clear that our intention is to make the child to stay with the paternal grandparents. Therefore, the child has to be left in the home of the appellant on the evening of the Saturday and thereafter he can be taken back on the evening of the next day i.e., Sunday. As the child will not be comfortable in the initial stage, the child may be left in the custody of the appellant from morning 10 a.m. to evening 5 p.m. on every first Sunday of the month for a period of six months and thereafter the order passed by us will have to be given effect to by which the child will be in custody of the appellant from the evening of the Saturday to the evening of the next day, i.e., Sunday. For the first month, the custody of the child in favour of the appellant will be in the presence of the respondent, preferably at her residence, which would make the child become comfortable and familiar with the appellant.

7. With the above said modification, the appeal stands disposed of. If there is any difficulty for the respondent to handover the custody of the child, the appellant can also go to

the place of the respondent. We also give liberty to the parties to file proper application seeking modification of this order, if there is any difficulty in complying with the said order from the point of view of the parties. No costs.

ssm

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

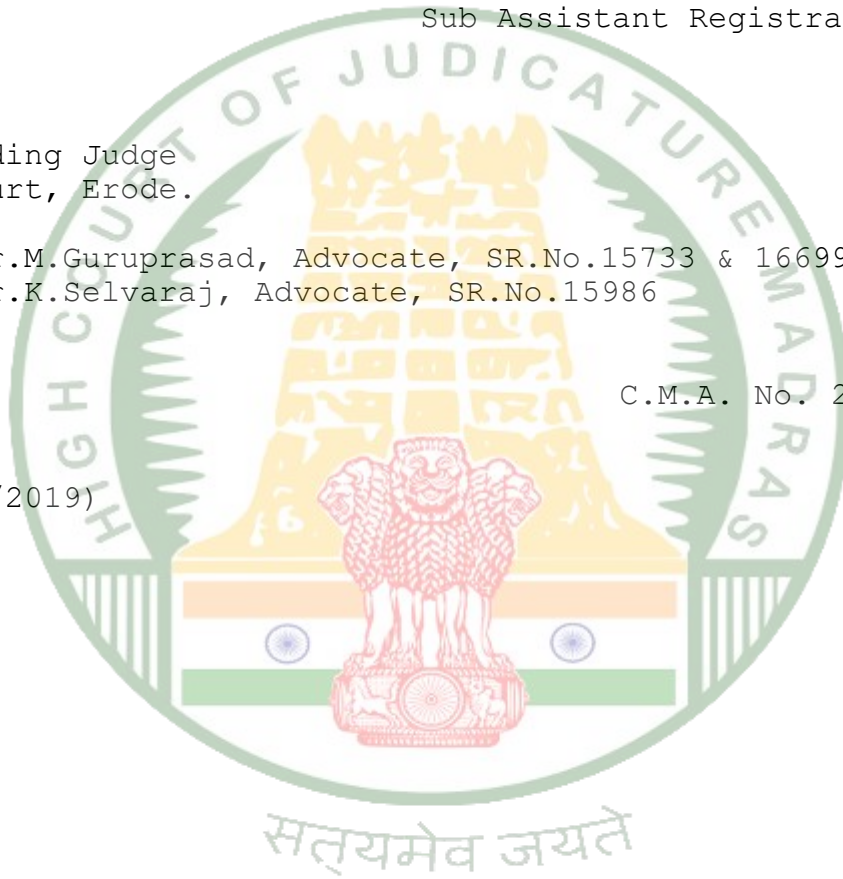
To

The Presiding Judge
Family Court, Erode.

+2cc to Mr.M.Guruprasad, Advocate, SR.No.15733 & 16699
+1cc to Mr.K.Selvaraj, Advocate, SR.No.15986

C.M.A. No. 2255 of 2016

Kak(14/05/2019)



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