

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMA NO.2670 OF 2016

AND CMP NO.19074 OF 2016

1.M.S.Selvam

2.S.Yogeshwari

... Appellants/Respondent

VS.

Parameswary

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of Guardians and Wards Act, 1890, against the fair and decreetal order dated 18.10.2016 passed in Guardian Original Petition No.02/2014, on the file of the Principal District Judge, Dharmapuri.

For Appellants : Mr.I.Abrar Md Abdullah

For Respondent : Mr.S.Nambi Arooran

J U D G M E N T

The present Civil Miscellaneous Appeal is filed against the fair and decreetal order dated 18.10.2016 passed in GWOP No.02/2014 by the Principal District Judge, Dharmapuri.

2. The appellants are the third parties who claim that they brought up the child for the money sent by the respondent/mother. Now the boy is aged about nine years. When the parties were directed to appear before this Court, the Boy refused to go with the respondent/mother. Thereafter, an interim arrangement was made on 29.03.2019, as follows:

"The matter was taken up in the Chambers and negotiations are held. Minor is studying IV Standard and he has to attend the annual examination from 8th April to 12th April 2019. After the examinations are over, the appellants agree to send the minor to their daughter's house at Vaniyambadi, where the respondent / mother of the minor can visit and make close acquaintance with him.

Post the matter on 25.04.2019 at 02.00 pm in the Chambers for appearance of parties."

3. It is the contention of the learned counsel for the respondent that during the brief stay, the boy was very much attached to the respondent/mother and only when he went back to the caretaker/appellants, he behaved otherwise.

4. Now that the learned counsel for the appellants would vehemently contend that the Lower Court failed to consider the principles governing appointment of Guardians. The minor is so emotionally attached with the appellants and his family members. The respondent being a relative can visit the child anytime. Granting custody to the mother will seriously prejudice the interests and well being of the minor.

5. The Hon'ble Supreme Court in VIVEK SINGH VS. ROMANI SINGH [2017 (3) SCC 231] has categorically held that the age around eight or nine is a very crucial and it is the age when his/her emotional development may be evolving at a deeper level than ever before. At that stage, keeping away the child from the relationship of a father or mother will create Parental Alienation Syndrome.

6. It will have serious consequences in the behavioural pattern of the child as he / she grows. Therefore, it is always better to give the custody to the natural guardian in the interest and welfare of the minors.

7. Curiously, in this case, the appellants are neither parents nor biologically connected to the child. They had taken care of the child during the absence of the mother when she was out of India for some money paid to them. They cannot claim any right over the child legally or on factual aspects. In the light of the judgment of the Hon'ble Supreme Court in Vivek Singh's case (cited supra) it is better to hand over custody of the child to the respondent / mother.

8. In such circumstances, this Court confirms the order dated 18.10.2016 passed in Guardian Original Petition No.02/2014 by the Principal District Judge, Dharmapuri, granting custody of the child in favour of the respondent/mother. The appellants are directed to hand over the child to the respondent within a period of one month from the date of receipt of a copy of this order without causing any emotional disturbances to the minor.

9. It is also necessary to issue a direction to the respondent/mother, in the interest of the minor, to retain the child in India without causing any emotional disturbances to the child and to maintain him well. If there is any complaint against taking the child outside India or any attempt to take

him away, without getting further orders from this Court, the same will be seriously viewed warranting penal consequences. Liberty is granted to the respondent/mother for approaching this Court for appropriate orders.

10. The Civil Miscellaneous Appeal is disposed of with the above observations and directions. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

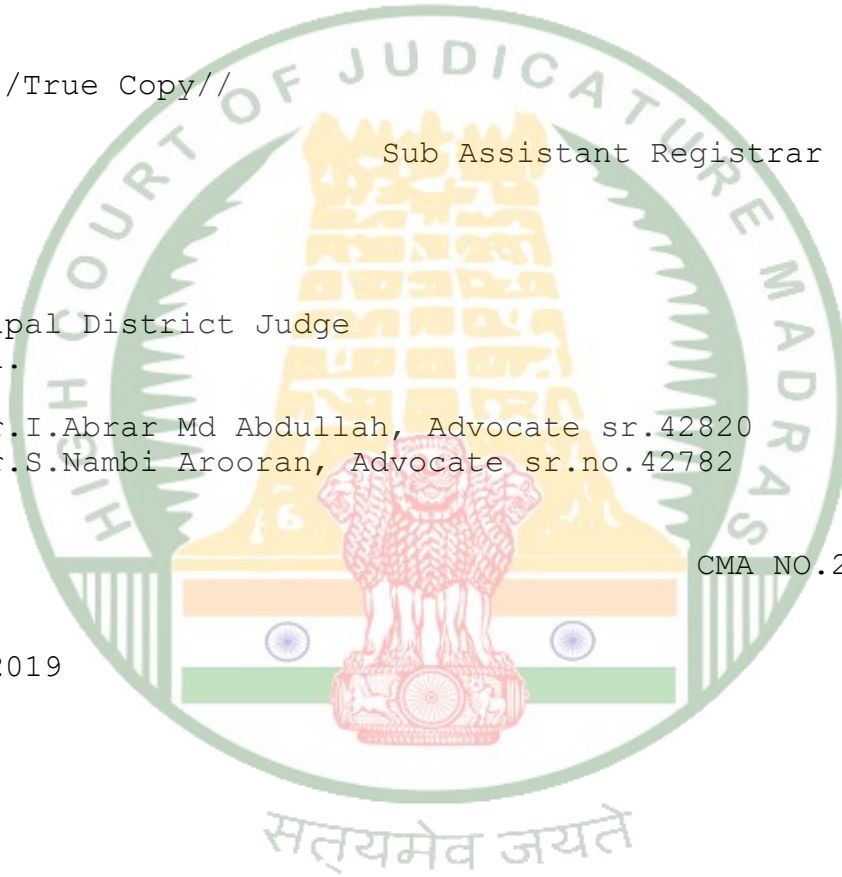
To

The Principal District Judge
Dharmapuri.

+1cc to Mr.I.Abrar Md Abdullah, Advocate sr.42820
+1cc to Mr.S.Nambi Arooran, Advocate sr.no.42782

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