



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (PD)No.2353 of 2011

M.V.P.Mariappan ... Petitioner/Petitioner/Respondent
Vs.

G.Vijayarani ... Respondent/Respondent/Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order passed in I.A.No.230 of 2010 in G.W.O.P.No.318 of 2009 on the file of the Principal District Judge, Thoothukudi dated 05.09.2011.

For Petitioner : Mr.R.Balakrishnan
For Respondent : Mr.K.Mahendran

O R D E R

This revision is filed challenging the order passed by the learned Principal District Judge, Tuticorin, dismissing the petition filed by the revision petitioner seeking custody of his minor son namely Aravind.

2. The facts in brief necessary for disposing of the above application are as follows:

The petitioner herein and the respondent got married on 21.06.1992 as per Hindu religious rites and customs. The petitioner would contend that his marital life was miserable from the date of his marriage and the respondent has treated him with cruelty. He would submit that she was not in the habit of listening to any of his advice and would act as per her whims and fancies. The respondent was not able to conceive a child for which she has undergone medical treatment and after 11 years, she had conceived a child. However, once again due to her ignoring medical advice she had a premature delivery and the baby died after three days. Thereafter, she had delivered the son, whose custody is now sought for by the petitioner, on 29.11.2008 at Trivandram. The petitioner's son is named as Aravind. The respondent is a Judicial Officer.

3. Thereafter in the month of November 2007 the respondent had deserted the petitioner and taken away her minor son to her parental home. The petitioner was visiting his son at Madurai at



his in-law's house and the child was affectionate to him. The petitioner would further submit that when there was no physical contact between him and the respondent herein, she had conceived and delivered a baby girl on 02.11.2009 at Trichy. The petitioner thereafter learnt about her adulterous conduct and immediately asked her to hand over his son vide his letter dated 15.11.2009. On receiving the said letter, the respondent had contacted the petitioner through his sister and agreed to hand over the son Aravind to him. On 21.01.2009, the petitioner went to Trichy and the respondent handed over the custody of the minor over to him. After getting the custody of the child, the petitioner had gone to Trichndur. Thereafter, within 2 days of getting the custody of his minor son i.e on 23.01.2009 while he was staying at a lodge, the Sub Inspector of Police, K.K.Nagar Police Station, Trichy and the Inspector of police, Tiruchendur came into the lodge and forcibly got the minor child from the petitioner. The petitioner would submit that the respondent, who is the Judicial Officer has misused the power and forcibly took away the minor. The minor son since 23.01.2009 was under the interim custody of the respondent. Therefore, the petitioner was left with no other alternative but to file the petition for custody of his minor son. The petitioner has filed a petition before the learned Principal District Judge, Tuticorin in G.W.O.P.No.318 of 2009.

4. On receiving the summons in the above application, the respondent had filed a counter denying the various allegations made in the petition and also taking out an application in I.A.No.230 of 2010 to treat the issue of jurisdiction as a primary issue. The respondent who had filed a petition in I.A.No.230 of 2010 would contend that under Section 9 of the Guardians and Wards Act, 1890 the application for custody of the minor should be made before the District Court having jurisdiction over the place where the minor ordinarily resides. Admittedly, according to the respondent/wife, the minor is living in Trichy with her and therefore, the District Court at Tuticorin did not have the jurisdiction to entertain the said petition. In her petition, she would also submit that the minor had never lived at Tuticorin and he is always living with her.

5. The petitioner herein has filed his counter stating that the court at Tuticorin had the jurisdiction since the forcible and illegal custody of the minor was taken at Tuticorin. That is sum and substance of his counter.

6. The learned Principal District Judge, Tuticorin by order dated 05.09.2011 answered the preliminary issue by holding that he did not have jurisdiction to entertain the main G.W.O.P. No.318 of 2009 since the minor was not residing within the jurisdiction of the said court. Challenging the said order, the revision



petitioner is before this Court.

7. Heard the learned counsel appearing for the revision petitioner and perused the papers.

8. The respondent though served has not chosen to appear either in person or through pleader and her name has been printed in the cause list. This Court therefore, proceeded to hear the application in her absence.

9. Mr.R.Balakrishnan, learned counsel appearing on behalf of the revision petitioner would contend that the respondent, who is a Judicial Officer is subject to frequent transfers and if the minor lives along with her he has to move from one place to other and his permanent residence at Tuticorin and he is residing there. He would also submit that till the child was forcibly taken away, the minor is residing at Tuticorin.

10. He would rely on the judgment of the **Delhi High Court in C.R.P.No. 48 of 2013 in Manish Sehgal Vs. Meenu Sehgal**, wherein the Delhi High Court, taking note of the fact that the father is Army Officer and he was being transferred from one place to other, the children were originally residing at Delhi prior to the start of the matrimonial dispute and therefore, the courts at Delhi alone has jurisdiction and not where the minors were studying. The Delhi High Court, following the earlier pronouncements of the Hon'ble Supreme Court, has held that the place, where the child is studying, cannot be treated as a place where he is ordinarily residing. He would therefore try to apply the ratio of that judgment to the facts of the present case.

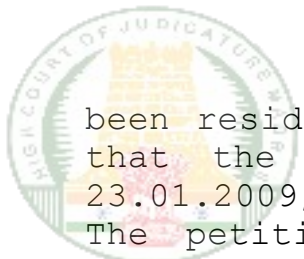
11. Heard the learned counsel for the petitioner.

12. Before proceedings to deal with the matter on hand it will be necessary to extract Section 9(2) of the Act, which reads as follows:

If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction to the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

13. Therefore, the emphasis is on the word 'ordinarily resides' in order to confer jurisdiction in matters filed for custody.

14. From a reading of the petition filed for custody, it is seen that from November 2007 onwards till 21.11.2009 the minor has



been residing at Trichy with his mother. It is only for two days that the petitioner had custody of the minor child and on 23.01.2009, the custody was once again taken back by the mother. The petitioner would contend that the Court at Tuticorin had jurisdiction only because the minor had been forcibly taken away by the police officials at Tiruchendur. Therefore according to the petitioner, the court at Tuticorin had jurisdiction to hear the application.

15. On a conspectus of the above judgments, it is clearly evident that it is only the court within whose jurisdiction the minor ordinarily resides that would have the jurisdiction to entertain the application under the Guardians and Wards Act. Admittedly, on the date of the filing of the petition, the minor was only residing at Trichy.

16. Therefore, I do not find any infirmity in the order passed by the learned Principal District Judge, Tuticorin.

17. In the result, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

Sub Assistant Registrar (CS)

CM

To

The Principal District Judge, Thoothukudi

+1 CC to M/s.R.BALAKRISHNAN, Advocate (SR-94373[F] dated 24/10/2019)

C.R.P. (PD)No.2353 of 2011
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KM/ (09.12.2019) 4P 3C