



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .Nos.538 and 621 of 2019

and

C.M.P. (MD) .No.6287 of 2019 in C.M.A. (MD) .No.538 of 2019

G.Padmavathy

... Appellant in both the appeals/
Respondent in both the petitions

Vs.

A.Kesavan

... Respondent in both the appeals/
Petitioner in both the petitions

COMMON PRAYER:- Appeals filed under Section 47 of the Guardianship and Wards Act, 1890, against the common order dated 13.06.2019 passed in G.W.O.P.No.41 of 2018 and H.M.O.P.No.42 of 2018 respectively by the Principal District Court, Tuticorin.

For appellant in
both the appeals

: Mr.S.Srinivasa Raghavan

For respondent in
both the appeals

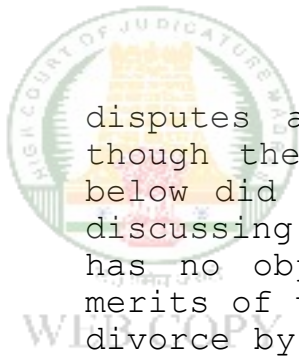
: Mr.G.Prabhu Rajadurai
for Mr.I.Robert Chandrakumar

COMMON JUDGMENT

These appeals have been filed by the appellant/wife challenging the common order dated 13.06.2019 passed in G.W.O.P.No.41 of 2018 and H.M.O.P.No.42 of 2018 respectively, whereby and whereunder the Court below has allowed both the petitions filed by the respondent/husband seeking the custody of the child and divorce respectively.

2. Since the issues involved in these appeals are inter-related to each other and they have arisen out of a common order, they were together and are being disposed of by way of this common judgment.

3. After the strenuous efforts made by this Court as well as the learned counsel for both sides in settling the matter, today the learned counsel appearing for both sides submitted that both the parties have come to an understanding and agreed to settle their



disputes amicably. They would further submit that during trial, though the appellant/wife gave her consent for divorce, the Court below did not consider the same, but granted decree of divorce, by discussing the merits of the case and that the respondent/husband has no objection in removing the observation with regard to the merits of the case made by the Court below and in granting decree of divorce by mutual consent. They would next submit that with regard to appeal against the order in GWOP is concerned, both the parties have come to a set of terms of compromise and to that effect, they have also filed a joint memo dated 29.08.2019, signed by both the parties and their respective counsel, and recording the same, the appeal filed against the order passed in GWOP may be allowed.

4. It is seen from the record that after filing GWOP for custody of the child and HMOP for divorce by the respondent/husband, the appellant/wife filed another HMOP for restitution of conjugal rights and subsequently, she withdrew HMOP for restitution of conjugal rights and filed a proof affidavit giving consent for divorce. Though the Court below has recorded the same in the common order dated 13.06.2019, it has gone into the merits of the case and granted the decree of divorce. As, now both the parties want to remove the observation with regard to the merits of the case and seek grant of divorce only by consent and considering the fact that the findings of the Court below may affect their cordiality in maintaining the child, this Court is inclined to set aside the findings of the Court below with regard to the merits of the case and to grant decree of divorce by mutual consent.

5. So far as the appeal against the order in GWOP is concerned, the learned counsel appearing for both sides produced a joint memo dated 29.08.2019 setting out the terms of compromise arrived at between the parties, which read as under:

"1)The parties agree that they will continue to be the natural guardians of the minor Abinaya Kesavan.

2)The appellant mother shall keep the physical custody of the minor.

3)The respondent father has visitation rights and the temporary custody of the minor in the following manner:

a)The respondent father is entitled to visit the child on any two Sundays every month at Kovilpatti. The mother or her parents shall hand over the child to the father at Krishnan Temple in Kovilpatti on receiving the information from the father through SMS or a phone call. The father is entitled to keep the minor during the daytime from 9.30 a.m. and will hand over the child to the mother or her parents before 6.30 p.m. on the same

<https://hcservices.ecourts.gov.in/hcservice> On the previous day, the father will inform



the mother or her parents through SMS before 9 p.m. about the intended visit and it shall be acknowledged by the mother or her parents.

b) The father can buy toys, gadgets, books, clothes, etc. for the child whenever he visits her or is with her.

c) During the festivals ie., Pooja holidays and Deepavali holidays and Pongal holidays the child shall be with the father and mother on rotation basis. During the next Pooja holidays in the year 2019, the custody shall be with the father who is entitled to take the child to his home at Coimbatore. Similarly during the next holidays ie., Deepavali, the child will be with her mother and so on. The father or his parents shall pick up as well as hand over the child.

d) The father is entitled to have custody of the child during the first half of Christmas holidays (ie., half-yearly leave) and the first half of Summer vacation. If mutually agreed, second half of vacation could be selected. The father or his parents shall pickup as well as hand over the child.

e) The father agrees to buy a smart phone for communicating with the child. The phone shall be with the mother or her parents with whom the child resides. The father is entitled to talk to the minor child between 7 p.m. to 8 p.m. on working days and 11 am to 12 pm on holidays or any other mutually agreed time. The father could communicate with the child either by voice mode or video mode. When the child is with the father, the mobile phone will be with the father or his parents and the mother is entitled to talk to the minor child at similar times.

f) The father will pay all the educational expenses of the child directly to the school.

g) The father will pay for the medical insurance of the child with a minimum coverage of Rs.2 lakhs. The father will deposit a lump sum of Rs.10 lakhs as fixed deposit in the name of the child. Rs.5 lakhs will be deposited before the end of December, 2019 and Rs.5 lakhs will be deposited before the end of December, 2020. The father will be the guardian for the same. The deposit receipts and medical insurance copies will be shared to the mother and he cannot close the account/deposits without the knowledge of the mother. In case of failure, this portion is executable.



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h) The father will have equal rights as that of the mother to interact with the school authorities and Teachers. Copies of documents given from the school, like school calendar, holiday list, progress report, etc. should be provided to the father. Where applicable, scanned digital copies sent through email/whatsapp would be sufficient.

i) The mother shall withdraw the suit filed by her against the father ie., O.S.No.18 of 2019 on the file of the District Court, Thoothukudi. The mother shall not claim maintenance for her, in either past, present or future periods.

j) The mother shall not take any major decision impacting the long-term future of the child without consent from the father, like changing schools.

k) The mother shall have the custody of the child's passport. The father shall do all the paperwork for the child's passport renewal. The mother shall cooperate with the father in all such matters in respect of passport renewal.

l) If the child is taken outside the district of residence for any reason (like tours), the mother shall inform the father by means of SMS in advance.

m) The mother agrees to provide the custody of the child to the father during the time of his family functions like marriage of close relatives. The father will ensure that the child doesn't have to take long leave from school.

n) The father and mother mutually agree that they have the duty to inform each other about the whereabouts of the minor child and her activities during the time when they have the custody of the child.

o) The mother shall provide copies and where applicable, originals of all identity documents of the child like Aadhaar card to the father except passport.

p) If the child is unwell or has any significant health issues, the father shall have a say in the nature of the treatment, choice of hospital and medical professionals.

q) In case of significant change in circumstances or violation of the above terms, the parties are at liberty to apply this Hon'ble Court for appropriate directions in the interest of the minor.

r) Advocate for the appellant Mr.S.Srinivasa and Advocate for the respondent



Mr.G.Prahbu Rajadurai agree to resolve any issue or difficulty that may arise in the working of the compromise until the child attains majority."

6. The above submission of the learned counsel for both sides and the Joint Memo dated 29.08.2019 are hereby recorded. The Joint Memo dated 29.08.2019 shall form part and parcel of this judgment and decree.

7. In view of the above, (i) the common order passed by the Court below dated 13.06.2019 is set aside;

(ii) H.M.O.P.No.42 of 2018 is allowed and decree of divorce is granted by mutual consent and thus, the marriage held between the appellant and the respondent on 26.04.2010 is hereby dissolved.

(iii) G.W.O.P.No.41 of 2018 is allowed in terms of the Joint Memo dated 29.08.2019 and the Joint Memo shall form part and parcel of the judgment and decree.

(iv) Both the parties shall strictly adhere to the terms of the Joint Memo dated 29.08.2019.

7. Both the Civil Miscellaneous Appeals are accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

Enclosure: Xerox copy of Joint Memo.

gcg

To

The Principal District Judge,
Thoothukudi.

+2 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate SR-84637 & 84638

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JM/23.10.2019/5P/4C