

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.304 of 2019

ORDER:

This Revision Petition is filed assailing the order dt.10-01-2019 in I.A.No.1265 of 2018 in O.P.No.1076 of 2018 of the Judge, Additional Family Court, City Civil Court, Hyderabad.

2. Petitioner herein is respondent in O.P.No.1076 of 2018.

3. The O.P. was filed by the respondent herein against her invoking Sections 7 and 10 of the Guardianship and Wards Act, 1899 (for short "the Act") to declare that he is the permanent guardian of his minor daughter by name Mamidipalli Gayatri, aged about 9 years; and for a permanent injunction restraining the petitioner and other family members from taking the custody of the said child illegally and forcibly from the respondent and from disturbing the respondent and the child at the house where he is residing and the school where she is studying.

4. Pending the said O.P., he filed I.A.No.1265 of 2018 under Section 12 of the said Act seeking interim custody pending the main O.P.

5. He contended that he had married the mother of the said child on 30-08-2007 but unfortunately she passed away on 05-08-2018; that the petitioner being maternal grandmother of the child is creating difficulties for respondent and retained the custody

of the minor child with the help of relatives; that attempts were made to change the school where the child was admitted for education also without the consent of the respondent; that respondent was threatened to leave the child with the petitioner; petitioner had polluted the mind of the child against respondent; and he was deprived of an opportunity to take care of the welfare of the minor child. It was also contended that petitioner is a Senior Citizen and did not have the physical, mental and financial capacity to look after the welfare of the minor child.

6. Counter-affidavit was filed by petitioner opposing I.A.No.1265 of 2018. Allegations were leveled against the respondent that he was a short tempered person and would frequently get angry. Certain allegations were also leveled by petitioner that respondent abused her daughter physically and mentally. Petitioner denied that she and her sisters considered change of the school of the minor child after the death of child's mother. It was alleged that the respondent made the child to sit near the dead body of her mother. It was denied that petitioner had poisoned the mind of the minor child against respondent. It is contended that the minor child herself wanted to stay with petitioner claiming that she was ill-treated by respondent. She denied that her relatives threatened the respondent in any manner. It was contended that the child herself is unwilling to go back to respondent and wanted to stay with petitioner for ever.

7. Before the trial Court, the respondent marked Exs.P-1 to P-37, but the petitioner did not mark any evidence.

8. By order dt.10-01-2019, the Court below partly allowed the I.A. permitting temporary custody of the minor child to respondent from 5 p.m. of every Saturday to 5 p.m. of every Sunday of the week, for the first half of Pongal holidays, summer holidays, Dassera holidays and Christmas holidays and from 9 a.m. to 3 p.m. on 10th July pending disposal of the main O.P. and permitted the respondent to collect the minor child on the said dates from the house of the petitioner.

9. In the said order, the Court below referred to the contentions of both sides as well as documentary evidence placed on record. The Court below observed that the documents filed by respondent showed that respondent and his wife were living together along with minor child cordially and respondent was looking after his wife and minor child well and there were no disputes between respondent and his wife during her stay with the respondent. It also observed that no *prima facie* material was placed by petitioner in support of allegations made against respondent. It took note of the fact that respondent was a highly educated person, who was working as Software employee in GENPACT and in his house, himself, his parents and unmarried brother were staying while the petitioner was a widow staying along with her unmarried son.

10. It also took note of the fact that minor child was studying 4th class in Foster Billabong High International School, Kapra, ECIL, Hyderabad and it was the respondent, who admitted the child in the said school. The Court below also interacted with the minor child on two occasions and noticed that she was a brilliant child having bagged medals in her school. The Court below also took note of the wishes of the minor child during its interaction with the child and noted that the child expressed her willingness to continue to stay with petitioner because she is comfortable with petitioner when compared to the respondent and that respondent can always visit her in the house of the petitioner. It rejected the respondent's contention that he would not go to his in-laws house because there is a life threat and held that there is no *prima facie* material placed on record to support the said contention. It therefore held that since the child is more comfortable with petitioner (i.e.) maternal grandmother, and if the Court suddenly reverses the custody of the minor child to petitioner, the child may be put to mental stress and disturbance, it was desirable that the minor child should have love and affection of both families of respondent and petitioner and more so with the respondent because he is the natural father. It observed that the mother of the child having died recently on 05-08-2018, some time is required for her to come out from shock and misery and in these circumstances, the custody of the child should continue with the petitioner, but temporary custody can be given to the respondent as mentioned above.

11. Assailing the same, this Revision is filed.

12. Learned counsel for petitioner sought to contend that respondent cannot be given temporary custody as per the directions of the Court below because the minor child was unwilling to go with respondent and the order passed by the Court below requires to be set aside. He denied the observations in trial Court's order that the minor child was more comfortable with petitioner than with respondent, and contended that the Court below ought not to have passed orders against the wishes of the minor child, who clearly stated that she could not stay with respondent. He contended that the Court below should have only granted visitation rights to the respondent at the house of petitioner. It is contended that the order passed by the Court below is not in the interest of the minor child and that the Court below has ignored the cardinal principle that the welfare of the minor child is of paramount importance. It is also contended that if temporary custody is given on every weekend, the child would lose all her Sundays and this will affect her studies and also holidays and that if the child goes back to respondent's house, the memories of her mother would haunt the minor child. Learned counsel brought to this Court's attention the schedule of the School vide its annual calendar and contended that the order of the Court below ought to be set aside.

13. I have noted the above contentions.

14. From the facts available on record, it is clear that respondent is the father of minor child and her mother died

unfortunately on 05-08-2018. Petitioner is the maternal grand mother of the child. The death of the mother of the minor child would have certainly affected the mind of the minor child as also of the respondent and petitioner. The Court below had interacted with the minor child and had *prima facie* come to conclusion that the respondent was paying for her education and the child was doing academically very well. It also took note of the fact that in the interaction which it had with the minor child, she has expressed her willingness to stay with the petitioner since she is more comfortable to stay with petitioner than with respondent. The respondent is a highly educated person and he is living in his house with his parents and unmarried brother. No *prima facie* material had been placed by the petitioner before the Court below in support of several allegations leveled by her against respondent.

15. In these circumstances, totally denying to the respondent access of the minor child is not desirable since admittedly he is the father and natural guardian of the child and she ought to be given an opportunity to develop love and affection with respondent also.

16. I am of the opinion that the Court below had correctly balanced the interests of the minor child and that of the petitioner and respondent and passed the impugned order.

17. In these circumstances, I do not find any error of jurisdiction in the order passed by the Court warranting interference by this Court under Article 227 of the Constitution of India.

18. Accordingly, the Civil Revision Petition fails and it is dismissed. No costs.

19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-02-2019
Kvr/Vsv

