

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.459 of 2019

ORDER :

This Civil Revision Petition is filed challenging the order dt.12.01.2019 passed in I.A.No.1389 of 2018 in O.P.No.14 of 2018 on the file of the Judge, Additional Family Court, City Civil Court, Hyderabad.

2. The petitioner herein is mother-in-law of respondent.
3. The daughter of petitioner was married to respondent herein, and later she died of cancer on 16.01.2018.
4. Two daughters and one son were born to respondent.
5. O.P.No.14 of 2018 was filed by petitioner against the respondent seeking guardianship of the said minor children alleging that respondent harassed her daughter, that he did not care for the children, and he forcibly took away the minor children from custody of petitioner.
6. Counter-claim was filed by respondent in the O.P. seeking custody of the minor children from petitioner, and denying the allegations leveled against him by petitioner.
7. In the said O.P., the respondent filed I.A.No.1389 of 2018 seeking interim custody of the minor children, pending the main O.P. He alleged that being the surviving parent of the children, he is

entitled to have temporary custody of the children, and that the petitioner was denying him access to the minor children and depriving them of his love and affection. He also alleged that petitioner was poisoning the minds of the minor children, and instigating them against him.

8. Counter-affidavit was filed by petitioner opposing the same and contending that respondent did not maintain good character and did not give proper medical treatment to his wife during her lifetime when she suffered from cancer. It was also stated that respondent's wife had stated that after her death, the minors should be in the custody of petitioner alone.

9. By order dt.12.01.2019, the Court below granted temporary custody of the children to respondent from 05.00 p.m. of every Saturday to 05.00 p.m. of every Sunday of the week; for first half of school holidays, including summer vacation, and from 09.00 a.m. to 03.00 p.m. of Ramzan and Bakrid festival, pending disposal of the main O.P.

10. The Court below observed that no criminal case had been registered against respondent and there is no material placed to show that respondent did not have good character. It also held that after the death of respondent's wife, he had sent the children to petitioner because the children were in a state of shock, but later the petitioner refused to allow the respondent to see them, and the respondent

cannot be deprived of the love and affection of the children. It also referred to the meeting which it had with the children and their refusal to go with the respondent, and stated that the possibility of petitioner tutoring the minor children cannot be ruled out. It also observed that during the lifetime of respondent's wife, she had not executed any Will expressing a wish that the children should not stay with the respondent. It observed that if temporary custody is given to the respondent the children would get adjusted to respondent and ultimately it can decide the custody of the children finally, keeping in view the best interests and welfare of the children.

11. Assailing the same, the present Civil Revision Petition is filed.

12. Though the counsel for petitioner sought to contend that the children had refused to go with respondent when the Court below interacted with them, as rightly held by the Court below, there is every possibility of petitioner poisoning the minds of the children against the respondent who is their natural father, and the respondent should be given an opportunity to interact with his children so that bonds of love and affection may develop between them.

13. Also, the petitioner is aged 65 years and if anything were to happen to her, the minor children would have to be taken care of by the respondent, and it is in the interests of the minor children that they get to interact with the respondent periodically and develop good relationship with him and benefit thereby.

14. There is no *prima facie* material placed by petitioner to show that the respondent had ill-treated her daughter or that he does not have good character.

15. Therefore, I see no error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

16. Accordingly, the Civil Revision Petition fails, and it is dismissed at the stage of admission. No order as to costs.

17. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04.04.2019

Ndr/*

