

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL NO.958 OF 2015

Divya Balraj

... Appellant/Petitioner

-vs-

M.Sowriappan @ Sowrappa ... Respondent/Respondent

Prayer:

Appeal is filed under Section 47 of Guardian and Wards Act to set aside the Order and Decree in G.W.O.P.No.15 of 2012 on the file of the Principal District Court, Krishnagiri dated 01.12.2014.

For Appellant : M/s.E.Yuvarani
For M/s.R.Poornima

For R1 : Mr.M.Ganesh

J U D G M E N T

This Appeal has been filed to set aside the Order and Decree dated 01.12.2014 made in G.W.O.P.No.15 of 2012 by the Principal District Court, Krishnagiri, in and by which the request for custody of his son by name Sujana Samuel was rejected by granting liberty to him to visit his son at the residence of the respondent herein as and when required.

2. It is the case of the Appellant that a son was born to him out of the wedlock with his deceased wife and the custody of his son was declined by the Lower Court on the ground that he has already entered into a second marriage. It is the grievance of the petitioner that when the father is alive, entrusting a child with the grandparents is unsustainable and the said order is liable to be set aside.

3. On 19.12.2019, it was represented by the learned counsel for the Appellant that the respondent is no more and the son of the Appellant is with his grandmother. Since it was stated that the whereabouts of the grandmother was not traceable, on

03.01.2020, this Court requested Ms.Kritika Kamal, learned Government Advocate (Crl.Side) to produce the grandmother and the son of the Appellant before this Court through Police.

4. Consequent to the order passed by this Court, Mr.V.Ravichandran, Special Sub Inspector of Police, Thally Police Station, Krishnagiri District secured both the grandmother, namely, Sagaya Mari, W/o.Late Sowriappan and the minor son Sujan Samuel and produced them before this Court. On enquiry with Sujan Samuel, he has informed that he is studying in the 5th Standard at Bangalore and he has not seen his father at all. When this Court posed a question to him whether he is interested in accompanying his father, his reply was in negative gesture. As the child is firm in not going with his father, forcing him to go with the Appellant may spoil his future and career psychologically, as he is said to be more comfortable with his grandmother.

5. Taking note of the interest of the child, this Court is inclined to pass the following directions:

i) The custody of the child Sujan Samuel is entrusted with the grandmother, namely, Sagaya Mari, W/o.Late Sowriappan, residing at 68, Betta Dhasanapura, Bommanahalli, Bangalore-500 068 (Mobile Nos.99809-56533 & 87053-69103) and the grandmother shall not change the mobile number (no bar to change the Operator) until the boy attains majority;

ii) The Appellant/father is permitted to visit the child as per the order of the Lower Court and he shall not take the boy out of the sight of the grandmother;

iii) The grandmother shall produce Sujan Samuel before the Child Welfare Committee, Krishnagiri District once in a year till he attains majority and the said Committee, after examination of the child, shall send a report to the Registrar Judicial of this Court thereafter.

6. With the above observation and direction, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Principal District Judge,
Krishnagiri.
- 2.The Secretary,
Child Welfare Committee,
Krishnagiri District.
- 3.The Registrar (Judicial),
High Court, Madras.

Copy To

The Section Officer,
(Judicial Section),
High Court, Madras.

Civil Miscellaneous Appeal No.958 of 2015

MR(CO)
CS/06/01/2021



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