

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.360 of 2013

B.Pushparaj

..Appellant

-vs-

1. T.Chinnathambi

2. Mrs.Eswari

W/o Chinnathambi

..Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act, 1890, against the fair and decretal order dated 29.10.2012 made in G.W.O.P.No.32 of 2009 on the file of the learned Principal District Judge, Vellore, Vellore District.

For Appellant :: Mr.M.Santhanaraman
For Respondents :: No appearance

JUDGMENT

Heard learned counsel for the appellant through video conferencing due to the Covid-19 pandemic.

2. The father of the minor boy P.Giridhar, has filed this civil miscellaneous appeal challenging the correctness of the impugned fair and decretal order dated 29.10.2012 passed in G.W.O.P.No.32 of 2009 by the learned Principal District Judge, Vellore, Vellore District. The appellant is the natural guardian of Master P.Giridhar, who was born on 10.10.2008 out of the wedlock on 17.6.2007 with Seenu alias Dhanalakshmi.

3. Mr.M.Santhanaraman, learned counsel appearing for the appellant pleaded that the appellant's wife Seenu alias Dhanalakshmi, after living happily with the appellant/husband, entertaining a frivolous and trivial suspicion that her husband was having an affair with another lady, committed suicide by consuming poison and died on 1.7.2009 without there being any reason or justification for her doubt. Thereafter, the first respondent, being the father in law of the appellant, gave a

false complaint against the appellant, his mother and his elder brother for the alleged offence under Sections 498-A and 304-B of the Indian Penal Code. However, the appellant surrendered before the Court on 9.7.2009 and he was enlarged on bail on 5.8.2009. Although the minor Giridhar was under the care and custody of the appellant and his wife Seenu alias Dhanalakshmi till the death of Seenu alias Dhanalakshmi and the surrender of the appellant before the Court, taking advantage of the absence of both parents, the first respondent, grandfather of the minor Giridhar, had taken custody of the minor. Immediately after the grant of bail, the appellant went to the house of the respondents and demanded the custody of the minor son to him. But the respondents refused to handover the custody of the minor son, although they were aware of the fact that they are illegally keeping the minor in their custody. Therefore, the appellant filed a petition under Sections 7 & 8 of the Guardian and Wards Act, 1890 before the District Court, Vellore seeking an order to appoint him as the legal guardian of the person and property of the minor son Giridhar with a further direction to the respondents to handover the custody of the minor to the appellant.

4. A counter affidavit has also been filed by the respondents stating that the appellant did not take proper care of his wife and minor son, therefore, the appellant's wife committed suicide because of the torture and ill-treatment. Besides, the dowry death case against the appellant and his relatives was pending under Sections 498-A and 304-B of the Indian Penal Code before the learned Judicial Magistrate, Katpadi and yet another ground was taken in the counter affidavit that the appellant was unemployed and not even owning any properties of his own and due to that, he is incapable of looking after the minor child properly. It has also been averred in the counter affidavit that the appellant was having illicit connection with other women during the lifetime of the deceased wife and he was also searching for marriage proposals with the demand of jewels and dowry. But after full enquiry, the learned Principal District Judge, Vellore, taking into account three grounds that there has been pendency of criminal proceedings for the offence under Sections 498-A and 304-B of the Indian Penal Code pending against the appellant, he is not entitled to have the custody of the minor; that as a father, he can get visitation rights every week from 4.00 p.m., to 6.00 p.m., before the All Women Police Station, Vellore and that the minor Giridhar has been with the respondents right from his childhood, which has resulted in the strong emotional bond between the minor and the respondents, has rejected the prayer of the appellant for custody.

5. Mr.M.Santhanaraman, learned counsel appearing for the appellant, assailing these three reasons, argued that although the three reasons given by the Court below are not sustainable in law, in view of the subsequent development and also in the light of Section 6 of the Hindu Minority and Guardianship Act, 1956, which makes the legal position unequivocally clear, pleaded that as per the Section 6, the natural guardian of a Hindu minor's person and minor's property is only the father. After him only the mother, provided that the custody of the minor who has not completed the age of 5 years shall ordinarily be with the mother. But in the present case, minor Giridhar is now aged about 13 years. Secondly, learned counsel appearing for the appellant, circulating a copy of the judgment passed in Sessions Case No.248 of 2012, submitted that even the criminal proceedings initiated against the appellant for the offence under Sections 498A and 304-B of the Indian Penal Code also ended in acquittal, by a detailed and reasoned judgment dated 4.4.2016 passed in Sessions Case No.248 of 2012 by the learned Sessions Judge, Fast Track Mahila Court, Vellore, dispelling the doubt and dismissing the falsehood made by the respondents. Even the Revenue Divisional Officer also, who had conducted enquiry, after taking evidence from two of the sisters of the deceased, namely, Eswari and Ambiga, who were examined as P.Ws.3 & 5, made it clear that neither P.W.3 nor P.W.5, sisters of the deceased Seenu alias Dhanalakshmi, never placed any allegation against the appellant with regard to the demand of dowry. On the other hand, they have said that the appellant and his wife were leading a happy life. Moreover, the deceased Seenu alias Dhanalakshmi was having unlimited love and affection on her husband, the appellant herein. In view of entertaining a sole suspicion that he was having some affair with another person, on that rumour, without even resorting to any enquiry, she committed suicide all of a sudden. On this basis, the Revenue Divisional Officer, who was examined as P.W.16, in his inquest report, made it clear that there was no case made out for dowry harassment and also inducement for committing suicide under Section 304-B of Indian Penal Code. The Court below also, accepting the report filed by the Revenue Divisional Officer, P.W.16 that is based on the evidence of P.Ws.3 & 5, sisters of the deceased Seenu alias Dhanalakshmi and also the evidence of five more panchayatdars, namely, Damodaran, Sampath, Gunalan, Elumalai, Venkatesan, who also spoke in favour of the appellant stating clearly that there was no such demand of dowry at any point of time from the appellant towards the deceased wife, dismissed all the charges and acquitted the appellant. Therefore, the first reason given by the learned Principal District Judge, Vellore that the appellant is not entitled to have the custody of the minor son Giridhar, on the premise that the criminal case for the offence under Sections 498-A and 304-B of the Indian Penal Code was pending against the appellant, has

to be rejected. Secondly, the Court below has given only visitation rights to the appellant to visit his minor son from 4.00 p.m., to 6.00 p.m., every week, that too before the All Women Police Station, Vellore, without even appreciating the fact that the son of the appellant cannot be exposed to the police station at his tender age. Thirdly, the direction given by the Court below that the respondents are having the custody of the boy from his childhood, is also without any reason. The reason being that from the date of death of his wife Seenu alias Dhanalakshmi, the appellant being the father has been picking up his son from the house of the respondents to drop him at the school and after the class hours are over, he has been taking his son and dropping him back to the house of the respondents. Besides, the appellant has been meeting out the expenditure towards tuition fees, clothing and maintenance of his son. These facts have not been considered at all by the Court below, as a result, solely on the ground that the criminal case was initiated against the appellant for the offence under Sections 498-A and 304-B of Indian Penal Code, the custody has been refused. This is against the mandate of Section 6 of the Hindu Minority and Guardianship Act, 1956, therefore, the impugned decretal order is liable to go.

6. Although notice has been served on the respondents and the matter was listed on the following four occasions viz., 5.8.2020, 3.9.2020, 18.9.2020, 25.9.2020, none appeared for them. That shows that they are not interested to prosecute the case. However, looking at Section 6 of the Hindu Minority and Guardianship Act, 1956, which reads as follows,

"S.6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; ,

it goes without saying that the natural guardian of a Hindu minor is only the father in the case of boy or unmarried girl and after him, the mother. But in the present case, the mother is no more, as she committed suicide. Therefore, as per Section 6, the appellant has been taking care of his minor son Giridhar, who is aged about 13 years now, by picking him up in the morning from the residence of the respondents and after dropping him at the school, again he goes to the school on time and picks him

and drops him back at the residence of the respondents. In addition thereto, he has been meeting out the educational and other expenses of the minor. Perhaps, this may be the reason for the respondents not coming forward to make any objection. This apart, the Court below has mentioned that in view of the pendency of the criminal case, the appellant is not entitled to have the care and custody of the minor. That reason also has to fall down, in view of the judgment of acquittal dated 4.4.2016 passed by the learned Sessions Judge, Fast Track Mahila Court, Vellore dismissing the charges as unsustainable in law. Besides, the Court below has directed the minor boy to be produced before the All Women Police Station, Vellore for the appellant to visit his son for two hours every week. It is not known how the Court below can direct the minor boy to appear before the police station without considering his tender age. Be that as it may. As Section 6 of the Hindu Minority and Guardianship Act, 1956 is explicitly clear that in the case of a boy or unmarried girl, father shall be the natural guardian of a Hindu minor, the impugned decretal order passed ignoring the mandate of law, as mentioned above, is liable to go. Accordingly, the impugned decretal order is set aside and the civil miscellaneous appeal stands allowed. The respondents herein are directed to handover the custody of the minor P.Giridhar to the appellant forthwith. Consequently, M.P.No.1 of 2013 is closed. No costs.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge
Vellore

Copy to
The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.360 of 2013

SAI (CO)
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