

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2020

PRONOUNCED ON : 15.12.2020

CORAM:

THE HON'BLE MR.JUSTICE V.SIVAGNANAM

C.R.P(PD).No.4216 of 2019

and

C.M.P.No.27495 of 2019

M.Suganya

...Petitioner

G.Karthik

Vs

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned fair and decretal orders dated 12.12.2019 in I.A.No.01 of 2019 in H.M.O.P.No.4215 of 2018 on the file of the II Additional Family Court, Chennai and dismiss the petition in I.A.No.01 of 2019 in H.M.O.P.No.4215 of 2018.

For Petitioner : Mr.E.V.Thulasi

For Respondent : Mr.Anna Poorna

ORDER

This Civil Revision Petition has been filed to set aside the order dated 12.12.2019 passed in I.A.No.01 of 2019 in H.M.O.P.No.4215 of 2018 on the file of the II Additional Family Court, Chennai.

2. The Revision Petitioner is the wife and petitioner in H.M.O.P.No.4215 of 2018. The petitioner filed H.M.O.P.No.4215 of 2018 for the relief of divorce. The marriage was held on 11.06.2009 with the respondent's husband. She has also prayed for permanent custody of child Aarav to her. Pending H.M.O.P., the respondent's husband filed I.A.No.01 of 2019 to hand over the custody of the minor child Aarav to him pending disposal of the H.M.O.P.

3. The trial Court after considering the argument of the counsel for the parties and based on records granted custody to the husband on the ground that minor child Aarav completed five years of age and his date of birth is 29.04.2014 based on Section 6 of Hindu

Minor and Guardianship Act 1956. In view of Section 6 of the above Act, father is the natural guardian of a Hindu Minor.

4. Aggrieved by this order, wife filed this Revision Petition.

5. The learned counsel for the petitioner submitted that the trial Court failed to consider the fact that child was brought up by the wife for the past five years and the husband did not support either financially or physically. Apart from this, husband is working at a distance place and the minor child is studying in Omega International School at Kolapakkam. The petitioner's wife is residing near to this school and wife is competent to have custody of the minor child for the welfare of the minor child. The minor ought to be in the custody of mother. Without considering this aspect, the trial Court granted interim custody to the husband and thus pleaded to set aside the order of the trial Court.

6.The learned counsel for the respondent supported the order of the trial Court. Learned counsel further contended that the wife is a psychiatric person and she is taking treatment. Apart from this, the trial Court interacted with the minor child and he expressed his willingness to be with the custody of the father. Considering the welfare of the minor child, the trial Court had rightly granted custody with the father and thus pleaded to dismiss the Revision Petition.

7.Heard the learned counsel for the parties and perused the materials available on record.

8.I have considered the order of the trial Court. The trial Court interacted with the minor child and enquired the child about his willingness whether he is willing to be with his father or mother. The child expressed his willingness, he wanted to live with his father. Apart from this, the child completed five years of age and he is now studying in Omega International School situated at Kolapakkam.

9. Admittedly the petitioner's wife is unemployed at present. Apart from this, financially she is not well supported. The respondent husband is working and earning. Under these circumstances, it is appropriate that the minor child to be with his father to continue his education and the respondent father is financially strong to bring up the child. During the trial the petitioner's mother may establish her bonofide claim with regard to custody of the minor child. At present, considering the welfare of the child and to continue his education with financial support and care, the trial Court had rightly granted custody to the father. I find no error in the order of the trial and find no merits in the Revision Petition.

10. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Index: Yes/No
Speaking Order: Yes/No
vsn

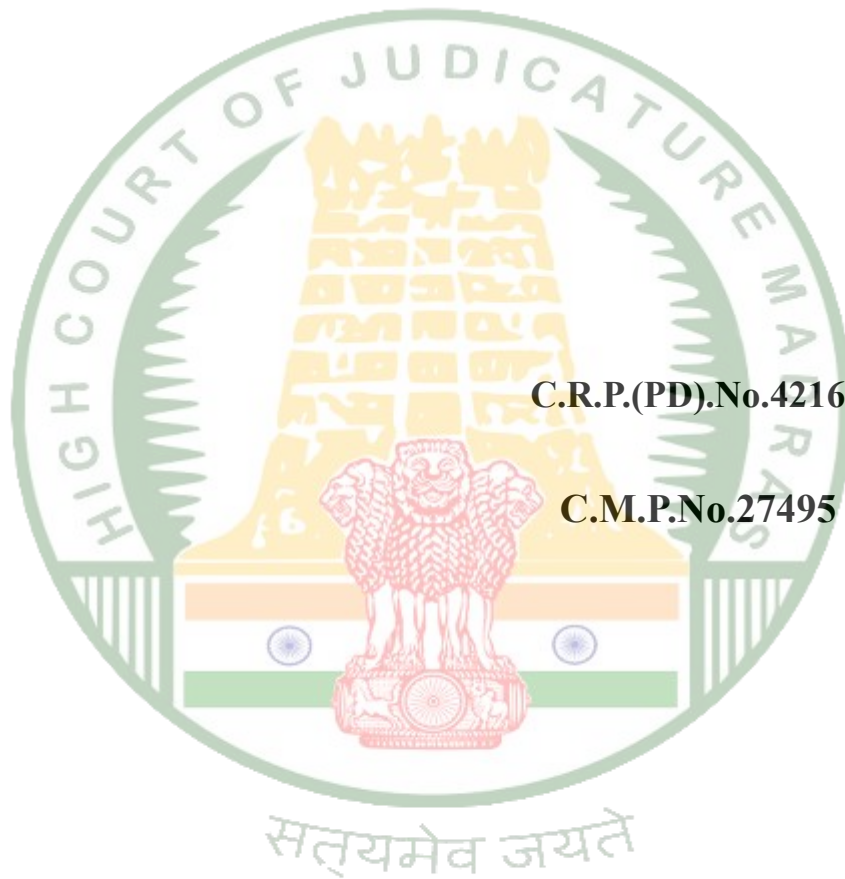
15.12.2020

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V.SIVAGNANAM.J,

vsn

To
1.II Additional Family Court, Chennai



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