



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.M.A (MD) No.435 of 2020

& CMP (MD) .No.5146 of 2020

WEB COPY

Tmt.Dhivya

.. Petitioner/Appellant/Respondent

Vs.

R.Kumaresan

.. Respondent/Respondent/Petitioner

PRAYER: The Civil Miscellaneous Appeal is filed under Section 47 of Guardian and Wards Act against the fair and executable order passed by the Hon'ble 1st Additional District Judge at Madurai in G.W.O.P.No.11 of 2018 dated 19.02.2020.

For Petitioner : Mr.B.Ramanathan
For Respondent : Mr.Babu Rajendran

ORDER

This Civil Miscellaneous Appeal is filed challenging the order passed by the First Additional District Judge at Madurai in G.W.O.P.No.11 of 2018 on 19.02.2020.

2.The dispute is all about custody of a minor girl aged about 14 years now. The marriage of the biological parents of minor Varsha has been dissolved, and the biological mother has since remarried, and has a child through that marriage. The minor has all along been with her biological mother and now continues to be under the care of her biological mother and her step father. It is in these circumstances, the biological father/respondent has filed G.W.O.P.No.11 of 2018 for custody of the child on the ground that he is the natural guardian of the girl. The learned District Judge has allowed this application solely on the ground that the mother of the child has remarried. This is now challenged in this appeal.

3.Heard both sides.

4.The reading of the order of the Court below does not indicate whether the learned District Judge had personally interviewed the girl and ascertained her willingness. After all, the minor is a girl of discernible age with her ability to make her choice and preference. Hence, this Court directed the parties to appear along with the minor.

5.Both sides appeared along with minor Varsha. This Court, at the first instance interviewed minor Varsha and tried to ascertain her willingness. She would state that till the filing of the case by the



respondent before the trial Court, she has not seen him. She proceeded to state that she appeared before the District Legal Services Authority merely because she was directed to obey the orders of the Court. This Court finds that she is grown up enough to know what she is saying. This Court also came to know that the child is happy in her present environment and made a categorical statement that she does not want to join the respondent and nor even like to be bothered with any such visitation right. Later, this Court summoned the respondent to appear. He along with his counsel joined the conference, and minor Varsha maintained her stance in the joint meeting of both her biological parents and counsel of both the parties.

6.It is a rudimentary principle that the welfare of the minor is paramount. Here is a girl of 14 years, studying in 9th standard and she seem to possess a fair decree of discernment and discretion, and has displayed her ability to make a choice and has her reasons to support her choice. This Court necessarily has to respect it. After all a custody also involves her privacy, besides the physical and emotional quality of life that she is entitled under the Constitution, and that cannot also be ignored.

7.Given the circumstance, the welfare of the child would be better served if the child is allowed to continue in the same environment as she is now. Necessarily, this Court has to set aside the order of the trial Court and allow the appeal.

8.In the result, the Civil Miscellaneous Appeal is allowed and the order dated 19.02.2020 made in G.W.O.P.No.11 of 2018 by the First Additional District Judge, Madurai is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To

The First Additional District Judge,
Madurai.

+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-24117[F] dated
07/12/2020)

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pm (CO)