



WEB COPY

C.R.P.(PD)(MD)No.1971 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 03.01.2020
DELIVERED ON : 09.03.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.1971 of 2018

and

C.M.P. (MD)No.8695 of 2019

V.Kannathal

.. Petitioner/1st Respondent/1st Respondent

Vs.

1.S.Nachiappan

.. 1st Respondent/Petitioner/Petitioner

2.N.Vairavan

.. 2nd Respondent/2nd Respondent/2nd Respondent

Prayer: This Civil revision petition filed under Article 227 of Constitution of India, to set aside the executable and fair order in I.A.No.275 of 2018 in G.W.O.P.No.20 of 2015 dated 13.08.2018 on the file of the Family Court, Madurai.

For Petitioner

: Mr.V.Ramakrishnan

For 1st Respondent

: Mr.G.Thaveethu

For 2nd Respondent

: No Appearance

ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.275 of 2018 in G.W.O.P.No.20 of 2015 dated 13.08.2018, on the file of the Family Court, Madurai.

3.The petitioner herein is the first respondent and the first respondent herein is the petitioner and the second respondent herein is the second respondent in G.W.O.P.No.20 of 2015. The petitioner herein is the wife of one Vijayakumar, the first respondent herein is the father-in-law of the petitioner and the second respondent herein is the father of the petitioner. The first respondent herein has filed a petition in G.W.O.P.No.20 of 2015 to hand over the custody of minor children, namely Roopa and Kishore to him. The first respondent herein has also filed an application under Order 6 Rule 17 of CPC and Section 151 of CPC to amend the application in G.W.O.P.No.20 of 2015.

4.The brief substance of the application in I.A.No.278 of 2018 is as follows:

The first respondent herein, who is the power of attorney of Vijayakumar, filed a petition in G.W.O.P.No.20 of 2015 under the

<https://hcservices.ecourts.gov.in/hcservices/>



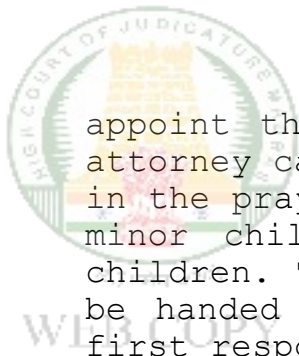
Hindu Minority and Guardianship Act, in respect of minors namely, Roopa and Kishore. The first respondent filed I.A.No.11 of 2013 to appoint himself as the power for attorney for his son Vijayakumar and that petition was allowed on 11.01.2013. Challenging the order, the petitioner herein has filed a petition in C.R.P.(MD)No.2258 of 2013 before this Court and the same was remitted back to the Court for appropriate orders. I.A.No.11 of 2013 was allowed on 01.09.2015. The first respondent on behalf of his son Vijayakumar filed an application in I.A.No.12 of 2013, directing the petitioner herein to hand over the custody of minor children to him on behalf of his son. That petition was allowed on 20.08.2013 with the right to the petitioner herein to see her children in the house of father-in-law whenever she visits. But the first respondent failed to amend the main petition. There was grammatical error in the prayer column. The first respondent herein wanted to amend the prayer column. It will not in any way change the character of the main petition.

5.The brief substance of the counter in I.A.No.275 of 2018 is as follows:

At the stage of arguments, entirely a new prayer is being introduced. The first respondent herein has created an email which is said to have been sent by him in the main petition and got the order in I.A.No.11 of 2013 by committing fraud on the Court. The petitioner was permitted to file the petition as a power agent and he is not entitled to give evidence. But I.A.No.12 of 2013 was not filed on behalf of his son. Earlier the first respondent has filed two petitions under Order 6 Rule 17 of CPC and the petitions were later not pressed by the first respondent. The petition is not clear whether the custody of the minor children is to be given either to the first respondent or his son. At this stage, claiming a new relief is not maintainable and that filing an amendment petition after 5 ½ years is barred by limitation. Though the petitioner himself has obtained a direction from this Court, he is dragging on the matter. The amendment petition can be filed only before the commencement of the trial and prayed the petition to be dismissed.

6.The trial Court after hearing both side, allowed the petition. Against which, the revision petitioner has come forward with this petition.

7.On the side of the revision petitioner, it is stated that the father of the children is in United States of America. The father-in-law of the petitioner, who is the grandfather of the children, only seek for the custody of the minors. G.W.O.P. Is contested and it is posted for arguments. Earlier the first respondent filed I.A.No.231 of 2018 later he withdraw the petition. Again he filed another application in I.A.NO.250 of 2018 and withdraw that petition. The first respondent is now introducing a new case and a new prayer. The introduction of the prayer will change the character of the case. The original prayer is only to



appoint the father as the guardian not for custody. The power of attorney cannot give evidence, he can only file a case as agent, but in the prayer column, the first respondent wanted the custody of the minor children himself and not on behalf of the father of the children. The amendment petition is vague whether the custody is to be handed over to the father or the grandfather. But earlier the first respondent has come forward with a civil revision petition for speedy disposal of the case, but now the first respondent is dragging on the case by filing various amendment petitions.

8.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **M.Revanna v. Anjanamma** reported in **2019 (4) SCC 332**, wherein it is stated as follows:

"If the application for amendment is allowed, the same would lead to travesty of justice, inasmuch as the Court would be allowing plaintiff nos. 1 to 5 to withdraw their admission made in the plaint that the partition had not taken place earlier. Hence, to grant permission for amendment of the plaint at this stage would cause serious prejudice to plaintiff no.6/respondent no.1 herein."

9.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **M.G.Kannan v. V.Palaniammal** reported in **2018 (1) MWN (Civil) 748**, wherein it is stated as follows:

"9.Proviso to Order 6, Rule 17, C.P.C., would clearly state that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. As per the above proviso, the petitioner cannot seek amendment during the appeal."

10.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Vidyabai and others v. Padmalatha and another** reported in **(2009) 2 SCC 409**, wherein it is stated as follows:

"19.It is primal duty of the Court to decide as to whether such as amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the Court. It puts an embargo on exercise of its jurisdiction, in a case of this nature is limited. Thus, unless the



be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint."

11.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **Natarajan v. Kaliyamoorthy and others** in **C.R.P. (MD)No.1424 of 2008**, wherein it is stated as follows:

"The petitioner has claimed the properties purchased in the name of first respondent and the second respondent who is the mother of the petitioner and the contention that the properties are joint in nature are different from the other. The petitioner is trying to filling up the lacuna in the plaint. Though the plaint was filed in the year 2001, the petitioner came forward with the petition for amendment only in the year 2008 after the case was posted for arguments. The cause for this delay is not explained by the petitioner. In the above circumstances, creating a new cause of action and filling up the lacuna cannot be permitted by way of amendment."

12.On the side of the respondents, it is stated that G.W.O.P. Was filed to appoint the petitioner as guardian. The prayer for the custody of minor children was left out and the amendment petition was rightly allowed by the trial Court. No new cause of action is introduced. The appointment as guardian emphasis that the guardian is entitled for custody also.

13.It is seen that earlier the petitioner filed two petitions for amendment and later on he withdrew both the petitions. G.W.O.P. Is pending from the year 2015 onwards. Only when the case is posted for arguments, after a lapse of 3 ½ years, the respondents has come forward with the petition to amend the prayer. The prayer to be amended will introduce a new cause. The petition is vague whether the custody is to be handed over to the father or the grandfather. Introducing a new case at the stage of arguments is not proper and there is an inordinate delay in filing this petition.

14.For the above reasons, this Civil Revision Petition is allowed and the order passed in I.A.No.275 of 2018 in G.W.O.P.No.20 of 2015 dated 13.08.2018, on the file of the Family Court, Madurai is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



The Judge, Family Court, Madurai.

+1 CC to Mr.V.RAMAKRISHNAN, Advocate (SR-10519[F] dated 09/03/2020)

+1 CC to Mr.G.THAVEETHU, Advocate (SR-11199[F] dated 11/03/2020)

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