

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.227 of 2021

Mr.V.Kousikan

..Appellant

Vs.

Mr.Sivapriyan

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 47 (f) of the Guardians and Wards Act, 1890 praying to set aside the fair order and final order passed in G.W.O.P.No.138/2020 dated 11.11.2020 by Principal District Judge, Coimbatore, thereby allow the relief sought for.

For Appellant : Mr.N.Vanitha

For Respondent : Mr.C.G.Kumar

J U D G M E N T

The fair and decreetal order dated 11.11.2020 passed in G.W.O.P. No.138 of 2020 is under challenge in the present Civil Miscellaneous Appeal.

2. The petitioner before the trial Court is the appellant and the petition was filed under Sections 3, 7 & 10 of the Guardian and Wards Act, 1890. The appellant states that he is residing in United States of America and employed in Docusign as Senior Production Data Engineer. The petitioner admits that the respondent is the natural guardian of the minor namely K.S.SreeDhanu and the appellant residing and working in U.S.A., therefore, he is in a better position to hold the minor with more opportunities for securing admission in India or abroad. For the purpose of securing such an admission, the appellant need a declaration from a Competent Court of Law for acting as a guardian for a minor child namely K.S.SreeDhanu and there was no objection from the respondent. Though the respondent being a father and natural guardian, supported the claim of the appellant in order to secure admission for professional courses either in India or in abroad. Thus, the intention of the parties to the appeal is clear that the petition under the Guardian and Wards Act, is filed so as to get a declaration from the

Competent Court in order to secure admission for the minor boy for studying professional courses. The minor boy is studying +2 Course as of now. In these circumstances, the present petition is filed before the trial Court seeking declaration.

3. The facts in nutshell are that the mother of the minor died in an accident during the year 2015 and all along the minor boy is living with the respondent / father and grand-parents are looking after the minor. The minor is now studying +2 course. At this juncture, the appellant, who is the maternal uncle of the minor filed a petition before the trial Court seeking declaration. Thus in order to avail the benefit of NRI quota for admission in professional courses or in any other courses, such declarations are sought for.

4. This Court is of the considered opinion that the intention and motive of the parties for filing a petition under the Guardian and Wards Act also to be taken into consideration for granting the relief.

Section 4 (2) defines "Guardian" means minor for whose person or property or both there is a guardian

Section 7 of the Act defines where the Court is satisfied that it is for the welfare of a minor that an order should be made - Appointing a guardian of his person or property or both, or declaring a person to be such a guardian the Court may make an order accordingly.

Section 8 of the Act deals with persons entitled to apply for an order.

Undoubtedly, any relative or friend of a minor is entitled to apply for an order. However, Court has to consider the fact that where the natural guardian become unfit to become a guardian.

Section 24 of the Act is more important which enumerates the duties of guardian of the person.

The provision contemplates that "A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires".

Therefore, the duty requires that such a guardian must have the custody of the ward and must look to his support, health and education.

4(a). Thus, on a conjoint reading of the scheme under the Guardians Act and the scheme under the Hindu Minority Act (bearing in mind that the latter Act is supplemental to the Act of 1890) the position in law is that in case of a Hindu minor during existence of a natural guardian, the Court is not authorized to appoint any other person as a Guardian and if any

such order is made, the same would be bad in law. The only exception being, where the Court finds that the natural guardian is not fit to continue as a guardian of the minor. The father of a child is the first person to be a natural guardian followed by the mother. Only in absence of the natural parents, can the question arise as to appointment of any other person, including a relative, as a guardian. Once it is found that a natural guardian is alive, and is otherwise not unfit legally to act as a guardian, no Court can exercise power to appoint any other person as a guardian.

5. In the present case, the mother of the minor died in the year 2015 in an accident and right from the childhood, the minor is living with his parents and after 2015, he is with the custody of the father / respondent in the present appeal. The interest of the minor is taken care by the father and grand parents, who are residing locally. Therefore, the facts are clear that the minor is with the custody of the respondent / father all along and now he is studying +2 Course and within a period of one year he will attain the age of majority. When the minor as of now is aged about 17 years, the question arises, whether there is any necessity to seek a declaration of guardianship by a maternal uncle, who is residing in United States of America. Thus, such an application for declaration is filed in order to secure admissions for professional courses under NRI quota by way of back door entry, which will never be encouraged by this Court.

6. Courts are expected to be cautious, while entertaining such declaration petitions under the Act. The very purpose and object of the Act is to ensure that the minors are protected and their interests are also taken care of. The interest of the minor till attaining the age of majority is to be taken care by the Courts in order to protect the property and the person. Courts are bound to pass orders and certainly not for securing admissions under NRI quota by getting a declaration in favour of maternal uncle, who is residing in U.S.A. At no point of time the appellant is residing with the minor. He is living far away and admittedly, the appellant is living with his wife and child at U.S.A.

7. Under these circumstances, this Court is of an opinion that he cannot be a guardian for the minor K.S.SreeDhanu, who is under the custody of his father / natural guardian. Thus, the motive of the parties are very clear that the appellant and the respondent joined together and filed a petition under the Guardian and Wards Act, only for the purpose of securing admissions under NRI quota. Such modus operandi by the persons, to secure admissions for professional courses can never be encouraged and in such cases, the Courts are expected to be

cautious and find out the intention of the parties for seeking such declaration. In the event of granting such declaration in favour of maternal uncle, the very purpose and object of the Act is defeated and spirit itself is crushed.

8. Even before this Court, the learned counsel for the appellant made a submission that they are objecting the second portion of the order, where the trial Court prevented the appellant from securing admission in Medical College or Engineering College under the NRI quota.

9. The learned counsel for the respondent has also not raised any objection and the tenor of the argument by the respective learned counsels appearing on behalf of the parties itself created an opinion in the mind of this Court that the parties have colluded each other and filed the petition before the Trial Court in order to secure admission under the NRI quota. If such practices are encouraged, the rights of the meritorious candidates and eligible candidates are denied. NRI quota is to be granted strictly in accordance with the rules in force. Authorities should not give any room for any illegal activities.

10. In respect of the present case on hand, it is unambiguous that the parties have approached trial Court by collusion in order to secure a declaration in favour of maternal uncle as guardian. The trial Court also committed an error in granting such a relief, however, imposed a condition.

11. This Court is of the considered opinion that granting a relief of declaration itself is perverse and in violation of the provisions of the Guardians and Wards Act, 1890. The father / natural guardian is taking care of the minor and grand parents are also living with him and appellant being maternal uncle residing in United States of America is certainly unfit to become a guardian of the minor K.S.SreeDhanu.

12. Accordingly, the fair and decreetal order dated 11.11.2020 passed in G.W.O.P.No.138 of 2020 is set aside. Consequently, C.M.A.No.227 of 2021 stands allowed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Pns

To
The Principal District Judge,
Coimbatore.

+1 CC to Mr.P.Suresh Babu,Advocate SR No.16409

C.M.A.No.227 of 2021

SS (CO)
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