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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.960 of 2015

M.P.No.1 of 2015

M.Subramaniyan

.. Appellant

vs.

Vijayarani

.. Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 47(a) of the Guardian and Wards Act, 1890, against the order dated 31.03.2015 made in G.O.P.No.2 of 2014 on the file of the Principal District Court, Tiruvarur.

For Appellants : Mr.Poovendran Perumal
for M/s.Sai and Bharath

For Respondent : Mr.B.Ramamoorthy

J U D G M E N T

The Fair and Decreetal order dated 31.03.2015 made in G.O.P.No.2 of 2014 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant is the father of the minors. Admittedly, the minor children are with the custody of the respondent/grand mother. Originally, the respondent/grand mother filed G.O.P.No.2 of 2014 before the Principal District Court, Tiruvarur under Section 8 of the Guardian and Wards Act, 1890 to appoint the respondent as legal guardian of the minor/Lakshanya and minor/Amirtharaj. The marriage between the appellant and the daughter/Late.Pradeeba of the respondent was solemnized on 14.09.2008. As a result of wedlock, the Late.Pradeeba delivered a female child on 19.06.2006 and the male child on 24.09.2013. After delivery, the health condition of the wife of the appellant became critical and she had taken treatment at CMC Mission Hospital, Vellore. She died on 17.12.2013 at Adyar Hospital, Chennai.



3. It is contended that the minor children were under the custody of the respondent/grand mother and grand father and all along, the children are with the grand parents. Under these circumstances, the petition was filed by the respondent to appoint her as guardian. The case was contested by the appellant before the Trial Court. the Trial Court considered the issues. Undoubtedly, the father is the natural guardian of the children. The right of the father as a natural guardian cannot be denied. But the interest of the minor children are of paramount importance. The atmosphere and the interest of the children are to be considered by the Courts while considering the petition under the Guardian and Wards Act. The Trial Court examined the minor girl and the minor girl/Lakshanya was found to be quite intelligent. The trial Court made an observation that her body language and attachment towards her grand mother is seen. When such factors were established, the Trial Court formed an opinion that in the interest of the children, the custody must be with the grand parents till they attain the age of majority, more specifically, found that the minor children are happy with the grand parents. Thus, the petition was allowed and the respondent was appointed as legal guardian of the minor children till they attain the majority.

4. The father of the minor children filed the present appeal mainly to ascertain his right as a natural guardian. However, he has no serious quarrel about the interest of the children and their willings. The appellant is residing alone and he has not re-married and he is working as Teacher. Therefore, he has to travel to the work place and come back during evening hours.

5. Therefore, this Court is of the opinion that it would be very difficult for the appellant to take care of the children. However, the appellant is also affectionate towards his children and even he has taken insurance policy in the name of his children. He is prepared to spend for his children's education and future welfare. This being the position, this Court has to adopt a balanced approach and both the parties are very much cordial and the point to be considered is for the interest of the children and their welfare.

6. The minor children are present before this Court along with grand parents and the appellant is also present before this Court. This Court examined all the parties. The minor children are recognizing their father/appellant. The minor children have expressed their willingness to continue to reside with their grand parents as it is comfortable for them. In other words, the minor children are very much happy with the grand parents. However, they have no hatredness towards father. The father is also affectionate with the minor children and he is willing to provide facilities for education and for the future of the



7. When the parties are cordial and the children are getting benefit of talking with their father and further, they are living happily with the grand parents, there is no reason to interfere with the findings of the trial Court regarding the appointment of the respondent as legal guardian. Now, the girl child is aged about 12 years and the boy is aged about 8 years. It would be very difficult for the father to maintain the girl child at this age and the grand mother would be the appropriate person to take means of the girl child, when the girl child is aged about 12 years and the boy is aged about 8 years. After attaining the age of majority, it is their decision to join with the father or look after the interest as per their own wish. Further, the minor children at this point of time is to be with the custody of the grand parents and they are capable of maintaining his minor children and they are maintaining with utmost care. The manner in which the children are brought before this Court, the love and affection shown by the grand parents as well as the facilities provided would reveal that the children are happy with the grand parents and further, they are not having any hatredness towards father.

Sd/-
Assistant Registrar

Sub Assistant Registrar

The Principal District Court, Tiruvarur

+1cc to Mr.T.Sai Krishnan, Advocate SR.No.18642

GSM (CO)
GMY (03/05/2021)