

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.03.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.227 of 2016
and
C.M.P.No.1902 of 2016

Ramachandran

..Appellant

Vs.

Palaniammal

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 47 of Guardian and Wards Act, to set aside the order made in G.O.P.No.210 of 2014 on the file of the III Additional District Judge, Salem, dated 17.12.2015 by granting the custody of the minor child.

For Appellant : M/s.T.Gayathri
For Mr.C.Kulanthaivel

For Respondent : Mr.R.Marudhachalamurthy

J U D G M E N T

The Fair and Decreetal order dated 17.12.2015 made in G.O.P.No.210 of 2014 is under challenge in the Civil Miscellaneous Appeal.

2. The appellant is the father of the minor and the respondent is the mother. The appellant filed the application under Section 25 and 12(1) of Guardian and Wards Act, 1890 to direct the respondent to hand over the custody of the minor son to the appellant or in alternate, to direct the respondent to permit the appellant to spend some hours with the child.

3. The marriage between the appellant and the respondent was solemnized on 08.11.2008 and they lived happily as husband and wife. A Male child born from and out of the wedlock on 24.03.2009, named as Vishanth. On account of the difference of opinion, both the appellant and the respondent are living separately. The respondent was willing to resume the matrimonial home and the same did not happened. Thus, the appellant/husband filed a petition, seeking the custody of the minor son as he has more love and affection towards the son. The respondent/wife defended the petition by stating that the appellant was having illicit intimacy with one Smt.Rajeswari, who is already married and having a son. The appellant/husband is maintaining the said

Rajeswari and her child and it was known to the respondent/wife only after the marriage. The respondent/wife requested the appellant to give up the relationship with the said Rajeswari. However, the appellant continued the relationship with the said Rajeswari. Thus, the dispute arose between the spouses and the respondent was forced to leave the Matrimonial home. The respondent/wife is living with her parents along with the minor child.

4. It is contended that the appellant/husband made an attempt to kidnap the child from the custody of the respondent/wife and a complaint was given before the Inspector of Police, Sooramangalam Police Station on 18.05.2015 and the Police advised the appellant to seek his remedy by approaching the competent Court of law. Under those circumstances, the appellant filed an application under the provisions of the Guardian and Wards Act.

5. The trial Court adjudicated the issues with reference to the documents and evidences. The findings of the trial Court are relevant and the same are extracted hereunder:

"11. After going through the records and upon hearing the submissions made on either side, this Court is able to find that it is admitted by both parties that the respondent left the house of the petitioner in the month of December 2010. The petitioner has come forward with this petition only on 24.07.2014. In his evidence P.W.1 Ramachandran has admitted there is no document to show that he made attempt to bring back the respondent to his house for the past more than 4 years. Further he admitted that the minor child was studying in Neelambal Matriculation School, Sooramangalam and the school fees is Rs.17,000/- and Auto fare is Rs.400/- per month and he has not paid or provided any amount towards the education of the child. Also there is no record to show that the petitioner provided to the respondent and their child, basic needs of day to day life. Further it is seen that the petitioner had visited the house of the respondent only in the month of May 2014 and according to the respondent the petitioner during that time attempted to kidnap the child from her custody. The complaint lodged by the respondent before the police and the C.S.R. issued for that are marked as Ex.R1 and Ex.R2. This Court finds that only to escape from the criminal liability, the petitioner has come forward with this petition.

12. It is seen that the petitioner has not filed any petition for restitution of conjugal rights and it is also not proved that the petitioner has spent at least some amount for the maintenance of the respondent and his minor son for their food, shelter and education. It can be easily inferred from the conduct of the petitioner that he has failed to discharge his moral and legal obligations as a father under law to provide even the basic needs to the child as well as the respondents. It is not the case of the petitioner that the respondent is not in a position to maintain the minor child. This Court is of the view that the petitioner cannot as a matter of right, under the provisions of the Guardian and Wards Act, be entrusted with the custody of the child on the ground that he is financially sound or claim any preferential right, just because, he is the father and natural guardian. Till filing of this petition by the petitioner the minor child is under the care and custody of the respondent only. Having considered the conduct of the petitioner, this Court is of the opinion that the petitioner is not entitled to seek for custody and guardianship of the child for the simple reason that the moral fiber is totally absent in his conduct. In view of the above, this Court is of the further view that the petitioner is not entitled to even permission to spend some hours with the child as prayed for and for the above reasons the petition is liable to be dismissed."

6. This Court is of the considered opinion that the interest and the well being of the minor child is of paramount importance and the very purpose and object of the Guardian and Wards Act to ensure that the minor children are protected. The custody of the minor boy in the present case is with the respondent/mother. All along, the minor child is residing with his mother and the appellant has not shown any responsibility. Even the trial Court found that the appellant has failed to discharge his moral and legal obligations as a father under law to provide even the basic needs to the child as well as to the respondent/wife, then the appellant has not even shown his responsibility towards his wife and minor son, the trial Court dismissed the petition by stating that the appellant is not even eligible to have visitation right.

7. This Court is of the considered opinion that the trial Court has considered all the allegations and counter allegations and made a finding that the appellant is not entitled for any

relief as he never behaved as a dutiful husband or father towards the minor son. The trial Court found that the appellant has not even provided the basic needs of day-to-day life either to his wife or to the minor child. This being the categorical finding, this Court is not inclined to interfere with the order passed by the trial Court. Consequently, the Fair and Decreetal order dated 17.12.2015 made in G.O.P.No.210 of 2014 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.227 of 2016 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

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To

The III Additional District Judge,
Salem.

+1CC TO MR.R.MARUDHACHALAMURTHY, ADVOCATE, SR.NO. 18396

+1cc to Mr.C.KULANTHAIVEL, Advocate, SR.NO. 18326

C.M.A.No.227 of 2016

AK II(CO)

KKN 23.04.2021

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