

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA
AND
THE HONOURABLE MR. JUSTICE G. CHANDRASEKHARAN

C.M.A.No.1154 of 2021
and
C.M.P.Nos.5903 & 5904 of 2021

Divya Davloor ... Appellant

Vs.

Harshavardhan Davloor ... Respondent

Prayer : Civil Miscellaneous Appeal filed under Order XLI Rule 2 of Civil Procedure Code r/w. Section 19 of the Family Court Act, to set aside the order dated 29.01.2021 passed by the learned V Additional Family Judge, Chennai, in I.A.No.6 of 2020 in G.W.O.P.No.3662 of 2019 in so far as granting absolute right relating to admission of the child to a school of respondent's choice made in Paragraph (xiii) clause (i) at Page 10.

For Appellant : Mr.S.Mahesh Kumar

For Respondent: Mr.K.P.Sanjeev Kumar

J U D G M E N T

(Judgment was delivered by G. CHANDRASEKHARAN, J.)

This Civil Miscellaneous Appeal is filed against the order of the V Additional Family Court, Chennai, in I.A.No.6 of 2020 in G.W.O.P.No.3662 of 2019.

2.G.W.O.P.No.3662 of 2019 was filed by the respondent under Sections 7, 8, 10 and 25 of the Guardianship and Wards Act, 1890, seeking appointment of the respondent as Guardian of the minor child Indradeva Davloor; to grant permanent custody and for other orders. During the pendency of this petition, the respondent filed I.A.No.6 of 2020 under Section 151 of the Code of Civil Procedure with a prayer to permit him to admit the child Indradeva Davloor in a reputed school at Hyderabad and enroll him in extra-curricular activities.

3.The facts relevant for the disposal of this appeal, in brief, are as follows:

The marriage between the appellant and the respondent had taken place on 29.01.2015. The male child Indradeva Davloor was born on 28.07.2016. The respondent is a Real Estate Developer and he has business interest in Chennai and Thiruthani apart from his workplace at Hyderabad. He spent quality time with his family and took care of his wife and his minor son by taking them to various recreational activities. He planned for a trip with his wife and son to Australia to attend his uncle's son's wedding and then to New Zealand. On 20.01.2019, the appellant's parents informed the respondent that the appellant took a decision to stay back in Chennai and prepare for the UPSC Examinations. The appellant stayed back in Chennai with her son and refused to come to matrimonial home. The respondent took his son to Hyderabad and admitted him in "Kangaroo Kids School" at Hyderabad. The child was with the respondent from 06.06.2019 to 17.07.2019. The respondent took care of the child's education and other sports and recreational activities. After the child has come into the custody of the appellant, he was not admitted in the school and there is no school or other sports or recreational activities. Due to lack of school environment, the child is not able to speak in English like other children. Therefore, the respondent filed the petition.

4.The appellant contended that the respondent illegally took the child and admitted him in "Kangaroo Kids School" and the appellant lodged a police complaint and secured the child. Only after that, the respondent filed the petition for custody. The child was taken to beaches, park, zoo and other kids activities. Due to pandemic, for the past 7 months, all the outdoor and recreational activities were closed as per Government norms. The appellant enrolled her son in "Oyster Kids Montessori" and the child completed Pre.K.G. in May, 2020. He is presently enrolled in "Alphabets International School", St.Mary's Road, Alwarpet, Chennai, and the child is stable and active physically and mentally. He is able to converse in Telugu, Tamil, Hindi and English with ease. For the past 2 years, the expenses of the child including education and others are met by the mother, and therefore, she objected the prayer of the respondent.

5.On considering the materials placed before the Court, learned Court found that some irregularities and illegalities were committed by the appellant while admitting the minor son in the school and gave permission to the respondent to admit the child Indradeva Davloor in a reputed school in Chennai with a direction to pay the admission fee and other fees, medical and transport expenses. In addition thereto, the respondent was directed to deposit a sum of Rs.5,00,000/- in the name of the child in any Nationalised Bank for the educational expenses of

the child, and to send the arrears of maintenance to the Bank account of the wife. Against the said order, the appeal is preferred.

6.The learned counsel for the appellant submitted that learned trial Court, without considering the best interest of the child, gave complete freedom to the respondent to choose the school of his choice, without minding the practical difficulties in attending the school from the place where the child is living with his mother now. Therefore, the learned counsel for the appellant prayed for setting aside of the order of the learned Family Court Judge.

7.In response, the learned counsel for the respondent submitted that the appellant had done everything wrong just to take away the child from the eyes of the respondent and just to deny the access and custody to the respondent, and therefore, finding the case of the respondent is just and fair, the learned trial Court Judge has permitted the respondent to admit the child in a reputed school with direction to meet all the necessary and incidental expenses, and therefore, prayed for the dismissal of the appeal.

8.A perusal of the order shows that the learned trial Judge has arrived at his decision on the basis of unassailable misconduct on the part of the appellant which cannot be appreciated. It can be gathered from the order that the appellant had stated in the counter that she admitted the child in "Oyster Kids Montessori House of the Children" (school) and that he completed Pre.K.G. in May, 2020. The respondent produced Ex.P3-application for showing that the appellant admitted the child by giving wrong names of the child, father and mother. The true name of the child is "Indradeva Davloor", but the name of the child was given as "Udayahassan". The name of the father is "Harshavaradan Davloor", but his name was given as "Harshavardan". The name of the mother is "Divya Davloor", but the mother's name was given as "Hamsanikejana". This application was submitted by the appellant in her own handwriting. She has not given the contact number of Dr.Subha. The learned Judge found that the claim of the appellant that the child completed Pre.K.G. was not correct for the reason that the application was submitted only in November, 2019, but she claims that the child completed Pre.K.G. in May, 2020. Ex.P3 is the application submitted by the appellant at the time of admission of the child. It speaks volumes of illegality committed by the appellant by changing the name of the child, father and mother, obviously for hiding the child from the view and reach of the respondent. This cannot be appreciated at all. For that it is deserved to be deprecated with all seriousness. The father, as

a natural guardian, is entitled for custody right. The materials produced primarily show that the child's education is properly taken care of by the respondent. When the father comes forward to take care of his child's education in a best School by meeting all the necessary and incidental expenses, it is just and fair that he has to be given permission to do that, which the learned Family Court Judge has rightly done. Hence, we do not propose to interfere with the order of the learned Family Court Judge, which is a well considered order.

9. In this view of the matter, we confirm the order of the learned Family Court Judge, passed in I.A.No.6 of 2020 in G.W.O.P.No.3662 of 2019, and dismiss the Civil Miscellaneous Appeal. No costs. Consequently, connected miscellaneous petitions are closed.

10. The learned Family Court Judge is directed to dispose of G.W.O.P.No.3662 of 2019 within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mkn
To

The V Additional Judge,
Family Court,
Chennai.

+2ccs to M/s.Rohini Ravi kumar , Advocate SR.No. 20239

+1cc to M/s.Ojas Law Firm, Advocate SR.No. 20283

A.SK(17.04.2021) C.M.A.No.1154 of 2021

WEB COPY