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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1055 of 2014

M.P.No.1 of 2014

Munusamy

.. Appellant

vs.

Jaya @ Jayalakshmi

.. Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 47(c) of Guardians and Wards Act, 1890 against the Judgment and Decree dated 18.02.2014 passed in G.O.P.No.17 of 2011 on the file of the Principal District and Sessions Judge, Dharmapuri.

For Appellants : Mr.C.Prabakaran
For Respondent : Mr.Tamil Murugan

J U D G M E N T

The judgment and decree dated 18.02.2014 passed in G.O.P.No.17 of 2011 is under challenge in the present Civil Miscellaneous Appeal.

2. The respondent/mother filed a petition to appoint her as guardian of the minor child. The appellant and the respondent are the husband and wife and they were living separately. The Trial Court adjudicated the issues and found that the mother would be an appropriate person as the child is a female child and accordingly, to declare the respondent/mother as guardian for the minor child. The said order was passed by the Principal District and Sessions Judge, Dharmapuri on 18.02.2014 and the petition was filed in the year 2011. The Civil Miscellaneous Appeal was filed in the year 2014. Though notice was served to the respondent, none appeared on behalf of the respondent and the name of the respondent is printed in the cause lists.

3. The learned counsel appearing for the appellant made a submission that right from the birth, the minor female child is with the custody of the appellant/father and all along, he is taking better care. Now, the child is aged about 14 years and



studying IX Standard. When the minor child is in the custody of the appellant for the past about 13 years and even after the order passed by the Trial Court, the respondent/mother has not taken any interest to implement the order, this Court is of the opinion that the order needs to be set aside.

4. Admittedly, the respondent/mother filed the G.O.P.No.17 of 2011 to appoint her as guardian. The Trial Court appointed the respondent as guardian. However, the respondent has not acted as guardian in the interest of the minor child for about nine years from the date of filing of the petition. Even during the pendency of the present appeal, the respondent/mother has not initiated any steps to implement the order.

5. The learned counsel appearing for the appellant made a submission that whereabouts of the respondent/mother is not known to the appellant or to the minor child.

6. This being the factum submitted, this Court is of the opinion that the order needs to be reversed. Accordingly, the order dated 18.02.2014 passed in G.O.P.No.17 of 2011 is set aside and the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb
To

Principal District and Sessions Judge,
Dharmapuri.

+1cc to Mr.C.Prabakaran, Advocate, sr no.17068

C.M.A.No.1055 of 2014

AKII (CO)
RMP (17/04/2021)