

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26-03-2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1853 of 2020

Mr.S.Easter Hail Witz .. Appellant /Petitioner
Vs.
1.Mrs.Asha Rajan
2.The Inspector of Police (Law and Order),
S.15 Police Station,
Selaiyur,
Chennai-600 073.
3.The Assistant Commissioner of Police,
Tambaram Circle,
Chennai-600 045. ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 104 read with Order 43 Rule 1 of CPC against the order and decretal order passed in IA No.1 of 2019 in GWOP No.48 of 2018 dated 09.01.2020 on the file of the learned Principal District Judge, Chengalpattu.

For Appellant : Mr.Haja Nazirudeen,
Senior Counsel for Mr.R.Tholgappian.

For Respondents : No Appearance

JUDGMENT

The fair and decretal order dated 09.01.2020 passed by the learned Principal District Judge, Chengalpattu in I.A.No.1 of 2019 in GWOP No.48 of 2018, is under challenge in the present Civil Miscellaneous Appeal.

2. The Interlocutory Application was filed by the appellant/ father of the minor girl child for an ad interim injunction, restraining the first respondent/mother of the minor girl child from in any manner taking the child from Chennai City to any other place in Tamil Nadu, including to other States and direct the ward to re-admit the minor Liana Easter in the same school by name Alpha International School, Sembakkam till the disposal of GWOP No.48 of 2018.

3. The appellant states that on account of strained relationship, both the appellant and the first respondent are living separately and they had impleaded respondents 2 and 3, who are Police Officials, who took the minor girl child and handed over the child to the first respondent/mother in a forcible and unlawful manner.

4. The appellant states that he is the better person to provide good education to the minor girl child and even after separation between the appellant and the first respondent, was assisting the child for getting admission in a reputed school namely, Alpha International School at Sembakkam.

5. All other education fees are being paid by the appellant. Contending that the appellant would be the appropriate person to provide better education to the minor girl child, the Interlocutory Application is filed for grant of an ad interim injunction, restraining the first respondent from in any manner taking the minor girl child from Chennai City to any other place.

6. The first respondent contested the application by filing counter statement. The first respondent objected the contentions of the appellant by stating that she never prevented in visiting the minor child whenever the appellant wanted. But the appellant on occasions used to take the child with him and retain the custody for weeks together without giving any information regarding the child and after great struggle, the first respondent/mother had to get back the custody of the female minor child from the hands of the appellant.

7. It is contended that during the month of June 2018, the appellant took the child forcibly from the hands of the first respondent/ mother and refused to handover the minor girl child back to the mother. Thus, she was forced to approach the Police Authorities and the Police Authorities, after conducting due enquiry, ascertained the facts that the appellant harassed the little minor girl child physically and after taking opinion of the child and her wishes and thereafter handed over the minor girl child to the first respondent/mother. That is the reason why the first respondent has dragged the Police Authorities based on unsustainable allegations.

8. The first respondent has further stated that the intention of the appellant is to harass the first respondent as well as the minor girl child. The appellant had developed a small grudge against both of them and he made his best efforts by way of approaching the School Authorities, where the minor girl child was studying initially and caused heavy nuisance to the Teachers and other staffs, where the first respondent/mother was warned by the School Authorities and forced to take Transfer Certificate due to unlawful act of the appellant.

9. The first respondent in view of escaping from the harassment of the appellant, took transfer on her job to Bangalore and got the child admitted in one of the best schools

there currently.

10. It is contended that the appellant do not hold any legal authority to demand the child as on date, since his only intention is to take revenge against the first respondent as well as the child, who herself has ignored her own father. However, the child, being the girl child, is also ethically needs mother's care at this stage.

11. Considering the allegations as well as the counter allegations, the Trial Court formed an opinion that the female child is now aged about 9 years and all along with the custody of the mother and at this stage, the girl child requires ethically needs the mother's care and therefore, the petition for grant of injunction was dismissed.

12. The learned Senior Counsel appearing on behalf of the appellant reiterated that the Trial Court passed an order in a routine manner, without adjudicating the concerns raised by the appellant in his affidavit. The appellant mainly raised that he would be an appropriate person to provide better education to the female minor child. The appellant is ready to spent for her education and he got admission in one of the best schools in Chennai. In order to separate the child from the father, the first respondent is acting in an indifferent manner and attempting to take away the child to some other place. All these facts put-forth by the appellant was not at all considered by the Trial Court.

13. The Trial Court formed an opinion that the minor girl child is aged about 9 years at the time of filing of the Interlocutory Application and probably now she is 10 years and the welfare and interest of the child is of paramount importance.

14. The learned Senior Counsel appearing on behalf of the appellant contended that the education of the child is more important. Undoubtedly, the education of girl child is very important and equally love and care is also far more important for children of tender age. Education alone cannot be the criteria. The wishes and the place of happiness and the likes and the dislikes of the children of tender age is to be considered by the Court.

15. In the present case, the female minor child is aged about 10 years and her wishes are considered by the Trial Court and further more, the child is with the mother's custody all along for many years and this being the factum, which is not disputed, this Court is of the opinion that the injunction, as such, sought for to restrain the first respondent from in any manner taking the child from the Chennai City to another place

is certainly unwarranted and such a direction nor the other direction to re-admit the child in Alpha International School in Sembakkam may be considered. Both the reliefs sought for in the same Interlocutory Application reveals the mind of the appellant and this Court is of the opinion that the appellant, if at all, wishes to be a dutiful father, he must be very concerned about the happiness of the child and when the child is happy with the mother, he is expected to assist the child for getting better education at the custody of the mother and not create such issues in order to disturb the happiness or the peaceful living of the minor girl child. Such sort of interruptions by the parents would cause prejudice to the psychological interest of the child of tender age. The female child, aged about 10 years, is capable of understanding the happiness.

16. In the present case, the child is City brought up. Thus she knows which would be the better place for her happiness and for education. This being the factum, this Court is of an opinion that the Interlocutory Application seems to be motivated and such a relief of ad interim injunction restraining the first respondent from in any manner taking his child from Chennai City to any other place in Tamil Nadu, cannot be granted nor a direction to re-admit the female minor child can be granted. Thus, the appellant has not established any acceptable ground for the purpose of interfering the findings of the Trial Court and accordingly, the fair and decretal order dated 09.01.2020 passed by the learned Principal District Judge, Chengalpattu in I.A.No.1 of 2019 in GWOP No.48 of 2018 stands confirmed and consequently, CMA No.1853 of 2020 is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

Svn

To

1.The Principal District Judge,
Chengalpattu.

2.The Section Officer,
VR Section,
High Court, Madras

+lcc to Mr.R.Tholgappian, Advocate, SR.NO. 20136

CMA No.1853 of 2020

MG (CO)

KKN 17.04.2021