

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2675 of 2017

Govindasamy .. Appellant

vs.

1.Krishnamurthy

2.Chinnapapa ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 47 of Guardian and Wards Act, 1890 against the order dated 17.06.2017 made in G.W.O.P.No.06 of 2015 on the file of the Principal District and Sessions Judge, Thiruvannamalai.

For Appellants : Mr.M.Sathish Kumar

For Respondent : Mr.Ashokapathy

for M/s.Pass Associates

J U D G M E N T

The judgment and decree dated 17.06.2017 passed in G.W.O.P.No.6 of 2015 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant filed a petition under the Guardian and Wards Act for the relief to appoint him as custody of the two minor children. The marriage between the appellant and the mother of the minors/Banupriya was solemnized on 27.11.2011 as per the Hindu Rites and Customs. Two children born from and out of wedlock and the mother of the child committed suicide and died. Thereafter, the minor children are living with the respondents/maternal grand parents. Under these circumstances, the appellant filed a petition for custody.

3. The trial Court adjudicated the issues. The respondents made a defence that the petition was filed by

suppressing the various facts. Due to continuous harassment of the appellant, the mother of the minors committed suicide and died. Therefore, the custody should not be handed over to the appellant and he will not maintain the children properly and therefore, future will get affected. Under these circumstances, the trial Court adjudicated the issues. After the death of the minors, both the children are with the custody of the maternal grand parents/respondents. The trial Court found that the children are happy with the grand parents and they are capable of meeting out all the requirements of the minor children. Under these circumstances, the trial Court adjudicated the relief as such sought for by the appellant in his petition. However, the trial Court granted visitation rights.

4. The learned counsel appearing for the respondent states that the visitation rights also has not been utilized by the appellant.

5. Per contra, the learned counsel appearing for the appellant states that he issued a notice and the respondent have not produced the minor child.

6. If at all the appellant is having real love and affection, he should have filed a petition for implementation of visitation rights. Admittedly, no such petition was filed. Contrarily, in the present appeal, during the hearing, the learned counsel appearing for the appellant states that the respondents have not provided him to exercise the visitation rights and to establish the same, he has not produced even a semblance of evidence. It is not made clear that whether the appellant has filed a petition in this regard. Thus, mere statement, after a lapse of many years, cannot be trusted upon. Therefore, an inference is to be drawn that the appellant has not even exercised his visitation rights for the past many years.

7. Under these circumstances, this Court directed for the appearance of the children along with grand parents. All appeared through video-conferencing with the assistance of the learned counsel appearing on behalf of the respondents. When a question is asked, both the children spontaneously informed that they are willing to live with the grand parents and they are afraid of the father. By seeing the children, this Court could able to form an opinion that they are happy and the grand parents are providing all their needs.

8. This being the factum, this Court is not inclined to interfere with the findings. Accordingly, the judgment and decree dated 17.06.2017 passed in G.W.O.P.No.06 of 2015 stands

confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Principal District and Sessions Judge,
Thiruvannamalai.

+2cc to M/s.Pass Associates, Advocate, S.R.No.18090

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GSM(CO)
KM(22/04/2021)



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