



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.10.2021

Delivered on : 20.12.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

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C.M.A(MD) No.189 of 2015

and

M.P.(MD)No.1 of 2015

1.S.T.Arockianathan

2.A.Elezabeth Victoria

... Appellants/Petitioner

Vs.

1.Joice Emili

2.Arokiaraj

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 47 of the Guardian and Wards Act, 1890, to set aside the judgment and decree, dated 23.12.2014, made in G.W.O.P.No.30 of 2012, on the file of I Additional District Judge (PCR), Tiruchirappalli.

For Appellants

: Mrs.J.Anandhavalli

For R1

: Mr.B.Jameel Arasu

For R2

: Mr.K.P.Narayanakumar

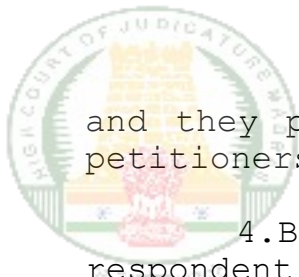
JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 23.12.2014, made in G.W.O.P.No.30 of 2012, on the file of I Additional District Judge (PCR), Tiruchirappalli.

2.The appellants herein are the petitioners and the respondents herein are respondents in the original petition.

3.Brief substance of the petition, in G.W.O.P.No.30 of 2012, is as follows:-

The first respondent is the daughter of the petitioners. She was married to the second respondent in the year 2007 and they gave a birth to the minor viz., Sharon Divina, on 10.03.2008. The child is residing with the petitioners. The second respondent is employed in Southern Railway at Erode. The first respondent is working as a Teacher in a private School and the respondents are living at Somarasampettai. The first respondent developed intimacy with a person, by name, Shajkumar and she went away and is living in adultery. The first respondent did not take care of the minor child. The second respondent is in a transferable job and he cannot take care of a female child. The petitioners, being the grand parents of the minor child, are taking care of the minor child. The first petitioner is a retired Teacher and he is having movable and immovable properties of his own and he is getting monthly pension



and they prayed that the custody of the minor to be given to the petitioners.

4.Brief substance of the counter filed by the first respondent, in G.W.O.P.No.30 of 2012, is as follows:-

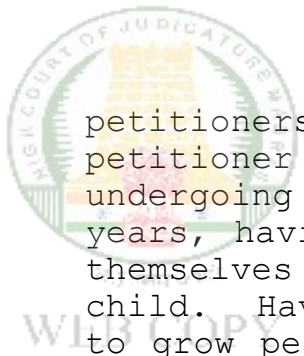
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4.1. The first respondent is not residing with the second respondent, but, the other allegation about adultery is wrong. She left the matrimonial house by the end of the First month of marriage itself, she was living alone. Soon after the completion of the first month of marriage, the second respondent started abusing and harassing the first respondent. The second respondent is having illegal contact with some other woman. The first respondent left the matrimonial house and came back to the petitioners' house. From the date of birth of the female child, the second respondent did not take any care for the child. The first respondent used to go for a job as a Teacher, to maintain the child. Without thinking the welfare of the first respondent, the petitioners prevented the first respondent from taking steps for divorce. The first respondent left the petitioners' house on 07.11.2011 with the child.

4.2.The petitioners lodged a complaint against the respondent in Valanadu Police Station and the complaint was enquired in Petition No.222/11. The police enquired the first respondent, and the first respondent requested the police not to send her back with her parents. The petitioners kept the first respondent in their relative's house at Karaikudi and harassed her. Because of the harassment, the first respondent was forced to get out of the house. Only to get a divorce from the second respondent, the first respondent left from Karaikudi, on 25.01.2012.

4.3. Again, the first petitioner gave a complaint before the Pallathur Police Station, on 25.01.2012, in Petition No.16/12. The first respondent surrendered all her jewels to the petitioner. The first petitioner denied to hand over the child to the first respondent. The police instructed the first respondent to get the child through Court. On 30.04.2012, the first respondent got divorce from the second respondent. Then, she came to know that the petitioners are living in Somarasampettai. Hence, she filed a petition before the Somarasampettai Police Station, to get back the child from the petitioners, in Petition No.299/12 and only during the enquiry, the first respondent came to know that the first respondent gave a paper publication as if the first respondent has left the house leaving the child. Only to get a Guardianship right, the petitioners are giving a false paper publication.

4.4. Later, the first respondent came to know about the pendency of the G.W.O.P. The child is just 5 years old. Without the care of the mother, the child is under depression. On 10.03.2013, when the first respondent went to see the child, the

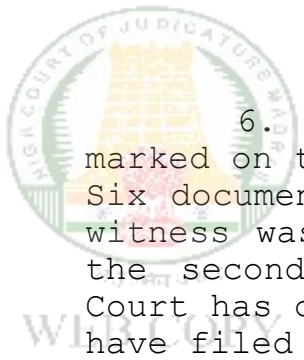


petitioners did not allow her to see the child. The first petitioner is aged about 65 years, who is a cancer patient undergoing Chemotherapy and the second petitioner is aged about 56 years, having blood pressure. It is hard for them to take care of themselves and it is not possible for them to take care of the child. Having money and financial assistance will not help a child to grow peacefully. The second respondent has never taken care of the child. So, it is not good to leave the child at the hands of the second respondent. The first respondent is well educated, holding a degree of Master of Arts and is working in a School as a Teacher. She can lead her child to a good path and good behaviour and the petition is liable to be dismissed.

5. Brief substance of the counter filed by the second respondent, in G.W.O.P.No.30 of 2012, is as follows:-

5.1. The first respondent lived with the second respondent only for a period of one month, after the marriage. Due to the bad instigation of the petitioners, she lived with her parents and on 06.11.2011, she went away along with one Shajukumar. The first petitioner filed a complaint at Valanadu Police Station and the first respondent was caught by the police and she was taken by the parents to her relative's house, at Karaikudi. Again, on 25.01.2012, she went away with Shajukumar and she is living in adultery with him. The marriage between the first and the second respondents was dissolved by a decree of divorce by the III Additional District Judge, Trichy, in I.D.O.P.No.24 of 2012, dated 30.04.2012. The second respondent is living at Erode and working in the Railways and he can maintain his daughter.

5.2. The first respondent had married Shajukumar, a person, who is having criminal background, he cannot maintain the minor child and it is dangerous for the child to live with her. The petitioners are having 70 sovereigns of gold to be given to the minor child, at the time of her marriage. When the first respondent attempted to get hold of the gold, she came to the house of the petitioners with her new husband and she took away the child. The first respondent and her new husband have attempted to destroy the life and property of the minor child by colluding with the petitioners. The second respondent is giving his monthly salary to the second petitioner to maintain the child. The second respondent allowed the petitioners to take care of the child, temporarily. Now, he has made all arrangements to educate the child by admitting her in a residential School. The petitioners are aged old persons, having lot of ailments and hence, the child cannot be a burden to them. The petitioners will allow the first respondent and her husband, who is having criminal background to take care of the child and the petition is liable to be dismissed.



6. One witness was examined and Thirteen documents were marked on the side of the petitioners. One witness was examined and Six documents were marked on the side of the first respondent. One witness was examined and Nine documents were marked on the side of the second respondent. After considering both sides, the trial Court has dismissed the Petition. Against the same, the petitioners have filed this Appeal.

7. On the side of the appellants, it is stated that the trial Court has failed to consider the welfare of the minor child. The trial Court has failed to consider that the respondents have not taken any steps to seek custody of the minor child. Each of the respondents got second marriage and are leading a happy life in their separate family. Till 2014, the second respondent did not take any steps to have the custody of the minor child. Both the respondents are unfit to act as Guardians. The child was in the custody of the appellants all along, ie. from the year 2008 and the trial Court has failed to consider the same.

8. On the side of the appellants, it is further stated that the first respondent eloped with somebody else. The second respondent got second marriage and he got his own children. The child was in the custody of the appellants. The second respondent is in a transferable job, he cannot take care of his minor female child. The child is in the custody of the grand-parents till now. There is no property in question. In fact, the property of the appellants will go to the minor child and the appellants got only one daughter, who is the first respondent. Both the respondents 1 and 2 live together only for a period of one month. Only out of love and affection, the grand-parents/appellants filed this petition.

9. The appellants are the parents of the first respondent. The respondents 1 and 2 got married during the year 2007, on 10.03.2008, a female child was born out of the wed lock. Both the appellants and the respondents admit that the respondents 1 and 2 lived together only for a period of one month from the date of marriage. On the side of the appellants, it is stated that the first respondent had illegal intimacy with one Shajukumar and she eloped with him. It is stated that the appellants lodged a complaint against the first respondent before the Valanadu police station in petition No.222/2011 and again, before the Pallathur police station in petition No.16/2012. The second respondent also placed allegations against the first respondent that the first respondent married one Shajukumar. From the oral and documentary evidence, it is clear that the second respondent got second marriage and he is having his own children through the second marriage.

10. It is seen that the appellants are taking care of the child from the year 2008 onwards. It is seen that the appellants are not interested in the property of the minor child. They have



filed this petition only out of love and affection. It is seen that the first respondent was eligible to work as a Teacher, but, no proof of salary was filed by the first respondent. The case of the second respondent is that he will bring up the child by getting admission in a residential School. It is clear that both the first and second respondents will not give a peaceful life to the minor child. Though the appellants are aged persons, having ailments, they can take care of the child with love and affection.

11. In the above circumstances, this Court is inclined to allow the Appeal. Hence, the order, dated 23.12.2014, made in G.W.O.P.No.30 of 2012, on the file of I Additional District Judge (PCR), Tiruchirappalli, is hereby set aside and the Civil Miscellaneous Appeal is allowed, declaring the appellants as the Guardians of the minor child. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

Ls

To

1.The I Additional District Judge (PCR),
Tiruchirappalli.

2.The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-39679[F] dated 21/12/2021)

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-39740[F] dated 21/12/2021)

C.M.A(MD)No.189 of 2015
20.12.2021

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