



O.P.No. 142 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No. 142 of 2020

S.Boobathy ... Petitioner

Vs.

Sumathi ... Respondent

PRAYER: Original Petition filed under Section 25 of the Guardians & Wards Act 1890 read with clause 17 of Letters Patent Act prays to grant permanent custody of the minor male children namely B.Siddharth born on 15.06.2008 & B.Sababathy born on 05.12.2012 to the petitioner herein.

For Petitioner : No appearance

For Respondent: Mr.K.Senthilkumar

ORDER

The petition has been filed under Section 25 of the Guardians & Wards Act 1890, read with clause 17 of the Letters Patent Act, to grant permanent custody of the minor male children, namely B. Siddharth, born on 15.06.2008 & B.Sababathy born on 05.12.2012 to the petitioner herein.



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2. The petitioner is the father of the children seeking permanent custody of the minor male children, namely B. Siddharth and B. Sababathy.

The respondent is the mother who has had custody of the minor children since their birth.

3. The learned counsel for the respondent submitted that the petitioner did not even come forward to make use of the visitation right that has already been ordered and that the children are under the custody of the respondent/mother of the children right from their birth and even after the petitioner and the respondent got separated. Despite the petitioner's allegations that the children are being threatened and not treated well by the respondent, he has not come forward to depose his evidence in this aspect.

4. Even though there are no arguments adduced on the side of the petitioner, it is seen that the petitioner examined himself as PW.1 and Ex.P1 to P36 were marked. The respondent examined herself as RW.1 and Ex.R1 to Ex.R4 were marked.

5. The relationship between the parties is not disputed. It is learnt that the marriage between the petitioner and the respondent has also been



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dissolved by virtue of the order of the court.

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6. It is submitted by the learned counsel for the respondent that the petitioner is in the habit of marrying several women and has entered into a third marriage with one Manimegalai and he will not be in a position to maintain the children properly. Even during the cross-examination of PW.1, he has admitted that he has a son born through his first wife and is presently living with his third wife and his mother.

7. Though the interim visitation rights were given to the petitioner, they were not properly utilised by the petitioner. Despite the fact that the petitioner has filed this petition seeking custody of the minor children, his conduct would show that he is not interested in continuing the proceedings. However, the respondent, who is the mother of the children who was examined in RW.1, has stated in her evidence that she is only taking care of the children and the children are bonded well with her. The respondent is the natural mother and hence I do not find any difficulty to allow the children to be under the custody of their mother. Since the petitioner is not in the habit of living with the



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R.N.MANJULA, J

jrs

children and the children also opt to live with their mother residence, I feel this application should be dismissed.

In the result, this original petition stands **dismissed**.

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jrs

Index :Yes/No
Speaking: Non-Speaking
Neutral: Yes/No

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