



C.R.P.(PD)No.921 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.921 of 2021 and
C.M.P.No.7492 of 2021

Karthik @ K.Dhanasekaran

.. Petitioner

Vs.

M.Darchana

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decreetal order dated 08.02.2021 made in I.A.No.23 of 2020 in HMOP.No.38 of 2020 on the file of the Subordinate Judge, Palladam.

For Petitioner : Mr.K.Sasindran

For Respondent : Mr.T.Shanmugam

ORDER

This revision has been filed against I.A.No.23 of 2020 in HMOP.No.38 of 2020. HMOP.No.38 of 2020 has been filed by the respondent/wife herein seeking divorce. In the said proceedings invoking



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Section 26 of the Hindu Marriage Act, 1955, she filed a petition seeking interim custody of her minor child Vidhya and to restrain the petitioner/husband not to interfere with the same.

2.The relationship between the parties is not in dispute. The petitioner and the respondent got married to each other on 27.04.2018. The child, during the filing of the petition was studying at Coimbatore. The husband and wife decided to part ways and in that war between the husband and wife, the child has been caught in the cross fire.

3.Before the learned trial Judge, against the application for custody two allegations were made by the husband

(i) the wife/mother had voluntarily abandoned the child and

(ii) the wife/mother had tortured the one year old child. No evidence was let in before the trial Court to substantiate the same.

4.The learned counsel for the petitioner would submit that he has videos and photographs to show that the respondent/wife had abandoned the child at the petitioner's house. This evidence had not been let in before the trial Court. Apart from that, no evidence was let in oral or



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documentary to prove that the mother had tortured the child.

5.The learned trial Judge looked into Section 6 of the Hindu Minority and Guardianship Act, 1956 and had concluded that the mother is a natural guardian of the child and therefore, ordered the application. Challenging the same, the present revision has been filed.

6.Heard Mr.K.Sasindran, learned counsel for the petitioner and Mr.T.Shanmugam, learned counsel for the respondent. I have carefully perused the records.

7.At the outset, I am not concerned with the fight between the husband and wife. The Court while dealing with the custody application is concerned only with the best interest of the child. The child in this case is a girl child, aged around 4½ years today. On account of the pendency of this revision, the affection of mother has been denied to the girl child.

8.Law presumes under the Hindu Minority and Guardianship Act that it is the best interest of the child that she grows with the mother till she reaches the age, wherein she can discern between the right and the wrong. If the mother is totally excluded from the child, it will be



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unfortunate for the child herself, because, she might suffer from “parental exclusion syndrome”. Therefore, I am not inclined to interfere with the order. The learned Judge has applied the correct law to the facts of the case. This revision deserves only an order of dismissal and accordingly, it is dismissed.

9.At this stage, I have to also balance the interest of the father. Therefore, the father is granted visitation rights which had been denied by the trial Court. The father can visit the child on the Sunday of every week and take her out, if necessary.

10.With the above observations, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

The Subordinate Judge, Palladam.

V.LAKSHMINARAYANAN,J.



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