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C.M.A.NO.1935 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1935 of 2022
and C.M.P.No.13309 of 2023

S.Magesh

...Appellant/Petitioner

Versus

Karunya Ganga

...Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 47 of Guardians and Wards Act, 1890 seeking to set aside the order passed in G.W.O.P.No.78 of 2020 dated 01.06.2022 by the learned Principal District Judge at Trippur.

For Petitioner : Mr.V.Ramamurthy
For Respondent : Mr.Arul Gnanaprakash

JUDGMENT

The appeal challenges the order passed by the learned Principal District Judge, Tiruppur in G.W.O.P.No.78 of 2020 dated 01.06.2022.



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2. The appellant/petitioner/husband had filed a petition praying for custody of his minor son namely Viduran as he was the natural guardian on the ground that the respondent/respondent/wife was incapable of taking care of the minor child; that the character of the respondent was not above board; and that the respondent was attempting to get remarried and hence she is not entitled to the custody.

3. The respondent had filed a counter denying all the allegations and also made allegations suggesting that the appellant's character was doubtful; and that in the interest of the minor child, the custody should not be granted to the appellant.

4. The appellant examined himself and his parents as P.W.1 to P.W.3; and marked Exhibits P.1 to P.4 on his side. The respondent examined herself as R.W.1 and marked Exhibits R.1 to R.5 on her side.

5. The learned Principal District Judge, Tirupur, after considering the facts and circumstances held that the appellant had not established the allegations against the respondent. The learned Judge also found that since the respondent had filed a divorce petition, the appellant had filed the instant



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petition; that even though the appellant had prayed for custody of the minor child, he had not asked for any visitation right and hence, suspecting the appellant's bonafides held that the appellant's petition is liable to be dismissed.

6. Mr.V.Ramamurthy, learned counsel for the appellant, submitted that the learned Judge had not taken into consideration the welfare of the minor child; that the respondent's parents are no more; that she is a working lady; that on the other hand, the petitioner's parents are alive and had been taking care of the child since his birth; that it would be in the best interest of the child, if the custody of child is handed over to the appellant.

7. Mr. Arul Gnana Prakash, the learned Counsel for the respondent, *per contra* submitted that the appellant is ineligible for custody; that the appellant has no source of income, whereas the respondent is working in a Bank; that the appellant is guilty of several wrong doings and hence, he is not a fit person; and that the welfare of the minor child demands that the custody of the child is with the respondent.



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8. This Court, on perusal of the pleadings, materials on record and the order passed by the learned Principal Judge, Tiruppur, finds that the appellant, though the natural guardian of the minor child had not been able to show that he should have the custody of the minor child for the child's welfare. Admittedly, the respondent is working in a Bank and has sufficient means to maintain herself and the child. Further, it is also seen that the child is in custody of the respondent for the past four years. It is well settled that in a petition for custody, the paramount consideration for the Court is the welfare and well being of the child. This Court is bound to give weight to the child's ordinary comforts, education and intellectual development. Since the child is only five years, this Court has to decide for the child. The question as to whether the father is fit to have custody or not is immaterial and it is the welfare of the child that is important. This Court enquired with the respondent as to how she would take care of the child as she was working. The respondent replied that since the child is studying in a School she sends off her child to school before she leaves for her job and the child is dropped by the School Bus at her work place in the evening.

9. Having regard to the fact that the respondent is having custody of her child for the past four years; that the respondent has been taking care of



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the child in spite of her employment and that she had made arrangements to take care of him, this Court is of the view that in the interest and welfare of the minor child, the custody has to be with the respondent.

10. Hence, this Court is of the view that the appellant cannot be granted custody of the child. The order of the Principal District Judge, Tirupur refusing to grant the custody to the Appellant cannot be faulted with as it is well founded.

11. However, this Court is of the view that in the interest of the justice the father/appellant should be allowed visitation rights. Even though there is no specific prayer for the same, the father shall be entitled to visit the child. This Court had asked the learned counsels on either side to ascertain from the parties as to what time would be convenient for both of them to allow the appellant to have the visitation rights. Both the counsels submitted that the appellant can visit the child once in a fortnight at a common place in Thiruppur. They suggested it could be at a Mall in Thiruppur. Accordingly, this Court holds that the appellant along with his parents can visit the minor child on the first and third Saturday of every



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month between 6.30 P.M to 8.00 P.M at D Mart, Mall, Bharathi Nagar,

Ammapalayam, Tirupur,

12. In view of the submission of the learned counsel for the appellant that the child's birthday falls on 11.07.2023, the appellant is permitted to meet the child along with his parents on that day between 6.30 P.M and 8.00 P.Mb at the same place (i.e.) D-Mart Mall, Bharathi Nagar, Ammapalayam, Tirupur.

13. It is also made clear that if there is any difficulty in complying above directions with regard to visitation for any reasons at a later stage, it is open to the parties concerned to seek modification before the learned Principal District Judge at Tiruppur and the learned Judge shall consider the request and pass appropriate orders as deemed fit on merits.

14. With the above directions, this Civil Miscellaneous Appeal is dismissed. Consequently, the connected Miscellaneous Petition is closed. No Costs.

03.07.2023

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Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To
The Principal District Judge
Trippur.



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SUNDER MOHAN, J

dk

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