



WEB COPY



HCP No.1388 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1388 of 2023

Nishanth Kumar

.. Petitioner

Vs.

1. The State represented by
Superintendent of Police (SP)
Pothinayanapally
Jakappan Nagar, Krishnagiri
Tamil Nadu - 635 001.
2. The State represented by
The Inspector of Police
City Police Station
Hosur, Krishnagiri
Tamil Nadu - 635 109.
3. M.Shanmugalatha
Plot No.2
Phase 5, Nandhavanam
Gokul Nagar Road
Hosur,
Krishnagiri - 635 109.
4. C.Swetha
Plot No.2
Phase 5, Nandhavanam



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that on the very next day, 15.12.2022 unfortunately petitioner's wife Sushma died; that this Court is informed that proximate cause of the death is Dengue; that respondents 3 and 4 (private respondents) are petitioner's mother-in-law and sister-in-law respectively; that fourth respondent is petitioner's late wife Sushma's elder sister; that the captioned HCP has been filed on 19.06.2023 after submitting a representation to the second respondent on 13.05.2023 alleging that respondents 3 and 4 are holding the absentee.

3. Issue notice to all respondents.

4. Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor accepts notice for official respondents [respondents 1 and 2] and learned State Additional Public Prosecutor is instructed by Mr.R.S.Sivakumar, Inspector of Police, Hosur Town Police Station, Krishnagiri District. As regards respondents 3 and 4 (private respondents), Mr.K.V.Sale Murugan [Enrol. No.316/1998] accepts notice for respondents 3 and 4 and submits that he along with his colleague Mr.S.Gunasekar [Enrl. No.817/1993] with address for service at Room No.21, 2nd Floor, 1/2, Kondi Street, Parrys, Chennai-600 001 would be representing respondents 3 and 4.



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5. In the light of the nature of the matter without insisting for vakalatnama, we record that Mr.K.V.Sale Murugan and his colleague Mr.S.Gunasekar would be representing respondents 3 and 4.

6. As regards petitioner, Ms.G.S.Saranya Bai, learned counsel is before us. To be noted, petitioner is not in Court.

7. We heard the aforementioned counsel and learned Prosecutor and the following facts emerged:

(i) Petitioner as well as mother-in-law (third respondent) have approached jurisdictional GAWA Court ['GAWA' stands for 'Guardians and Wards Act, 1890'] and petitions filed by petitioner and third respondent are G.W.O.P.Nos.9 of 2023 and 5 of 2023 respectively in the jurisdictional District Court, Krishnagiri;

(ii) Aforementioned G.W.O.Ps have been filed *inter alia* seeking custody of the absentee;

(iii) Third respondent was residing at D.No.L3, 84, VOC Nagar, New ASTC Hudco, Hosur Town and Taluk, Krishnagiri



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District and we are informed that it is her own accommodation / own house (not rented). Now the third respondent has moved in with her daughter (fourth respondent) in Plot No.2, Phase 5, Nandhavanam, Gokul Nagar Road, Hosur, Krishnagiri - 635 109 (in the last one week);

(iv) Fourth respondent is residing in Plot No.2, Phase 5, Nandhavanam, Gokul Nagar Road, Hosur, Krishnagiri - 635 109 and we are informed that it is her own house;

(v) Fourth respondent is married in the last one year. We are informed that fourth respondent is in Chennai for three days in a week in VCK Royal Gardens, F2, 1st Floor, 1st Cross Street, Surendra Nagar, 6th Cross, Adambakkam, Chennai-600 088;

8. In one of the aforesaid GAWA matters, this Court is informed that the fourth respondent has been set *ex parte*. Learned counsel for respondents 3 and 4 assures that necessary steps will be taken and an advocate has already been engaged and both sides submit that the GAWA matters will be diligently pursued in the concerned Court.



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9. The narrative thus far makes it clear that this is a tussle between father on one side and grandmother and maternal aunt on other side for custody of seven month old child. Be that as it may, both parties have already approached jurisdictional GAWA Court. Therefore, it is only appropriate that the custody of the absentee issue is decided by GAWA Court on its own merits and in accordance with law untrammelled by this order which has been made for the limited purpose of habeas legal drill.

Captioned HCP disposed of as closed albeit recording what unfurled in the Court today.

(M.S.,J.) (R.S.V.,J.)
27.07.2023

Index : Yes / No
Speaking / Non-speaking order
Neutral Citation : Yes / No.

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3. The Public Prosecutor
High Court, Madras.



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R.SAKTHIVEL, J.,

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