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C.M.A.No.284 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.04.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.284 of 2020

and

C.M.P.No.1945 of 2020

P.Srinivasan

... Appellant

Vs.

1.P.Mayavel

2.M.Sarashwathy

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 47 of Guardian and Wards Act, 1890 praying to set aside the order and decree dated 10.08.2015 passed in G.O.P.No.136 of 2014, on the file of the II Additional District Court, Salem.

For Appellant : M/s.R.Thanjan

For Respondents: Mr.N.Manokaran



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JUDGMENT

This appeal is filed against the order and decretal order dated 10.08.2015 passed in G.O.P.No.136 of 2014 on the file of the II Additional District Court, Salem.

2. The father of the minor child is the appellant herein. The application was filed by the father of the minor child under Sections 7 and 25 of the Guardian and Wards Act, 1980, read with Sections 4 and 6 of the Hindu Minority and Guardianships Act, 1956, seeking for a direction to the respondents to hand over the custody of minor child Pradiksha to the appellant.

3. The appellant married one Anitha on 24.08.2009 and out of their wedlock, a minor child Pradiksha was born on 09.09.2010. The appellant and his wife were residing at Saidapet, Chennai. While so, the appellant's wife committed suicide and a case was registered in Crime No.2343 of 2012 under Section 174(3) Cr.P.C. dated 28.04.2012.

4. According to the appellant, his wife was forced to commit suicide, because of the harassment of her parents. As the minor child was taken away by the parents of the deceased wife, the appellant was constrained to file G.O.P.



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Though he was a natural guardian, he was deprived of the custody of his minor daughter.

5. On the other hand, the respondents, who are the grand-parents of the minor child, contested the said G.O.P. stating that the appellant had parted from the child soon after the death of their daughter and the appellant had never attempted to visit the minor child.

6. According to the respondents, it was the appellant, who harassed their daughter for dowry, and that was the reason for their daughter's suicide. The respondents further stated that ever since the death of their daughter, the minor child was in their custody and she was happy with them. The respondents further stated that they never prevented the appellant from seeing his daughter Pradiksha.

7. During the pendency of G.O.P., the petitioner filed an interlocutory application for interim custody. The lower Court decided both G.O.P. and I.A. together, as the contentions in the interim application were similar to those raised in the main O.P. The lower Court on an assessment of entire facts and circumstances of the case, dismissed G.O.P and allowed I.A. by giving



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visitation rights to the appellant with a direction to the respondents to leave the child once in 15 days, preferably in holidays, to the appellant between 10 a.m and 5 p.m. Aggrieved by the order passed by the lower Court, the father of the minor child has filed the above appeal.

8. At the time of hearing of the appeal, this Court directed the parties to produce the child in the Chambers. It is seen that right from the death of the appellant's wife, i.e. from 28.04.2012, the child has been with the grandparents and it was only 2 years thereafter that the appellant filed the petition for custody of the child.

9. From my interaction with the child, I find that she is very mature, composed and forthcoming. When I questioned her about her father, she categorically stated that she never saw him and did not know him. The child is very comfortable with her grand-parents and it did not seem to the Court that she was tutored. The grandmother of the child stated that the child is 12 years old and had reached puberty and therefore, she was apprehensive of letting her out alone.



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10. When the child was asked whether she recognised her father, she curtly replied “I don't know him”. It was observed that the appellant felt like a stranger to the child. In spite of being asked repeatedly, if she was willing to go with her father, she sternly refused making the Court feel, as if she was forced to go with a stranger and not her father. The child addressed her grandparents as “Amma and Appa”.

11. It is to be noted here that the appellant has entered into a second marriage and he has a daughter through the second wife. The said G.O.P. has been pending before the Court below right from the year 2014 and it is contended by the respondents that, in spite of visitation rights granted by the lower Court, the appellant had not visited his child.

12. When the appellant was questioned as to whether he would visit the child in her maternal grandmother's place, he refused and in spite of repeated persuasion by his counsel and the Court to try and build a bond with the child by visiting her in her natural environment, he did not agree.

13. The lower Court has meticulously dealt with each and every aspect of the case and therefore, this Court, in order to give opportunity to the appellant,



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interacted with the child to find out her wishes. As the child has not evinced any interest in going with her father, I find no reason to interfere with the meticulously considered order of the Court below. The fair and decretal order of the Trial Court therefore is confirmed.

In view of all the above reasons, I am of the view that the appeal is devoid of merits and the same is accordingly dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

26.04.2023

dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. The II Additional District Judge,
Salem.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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N.MALA.J.,

dsn

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