



C.M.A.No.3339 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3339 of 2017

and

C.M.P.No.21174 of 2017

Mohana Krishanan

... Appellant

Vs.

T.S.Raju

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section XLII Guardians And Wards Act to set aside the decree and judgement dated 11.09.2017 made in GWOP.No.24 of 2014, on the file of the Principal District Judge, Vellore.

For Appellant : M/s.R.Ramya

For R1 : M/s.P.S.Vasanthakumar



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the orders passed in GWOP.NO.24 of 2014 by the Principal District Judge, Vellore wherein learned District Judge has refused to appoint the appellant herein as a guardian of the minor child by name R.Krithiga.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. Petitioner herein is the grand father of minor child R.Krithiga who born to the respondent and his wife namely Mrs.Mythili on 17.02.2007. Subsequently, the mother was died on 10.10.2010 due to ill health leaving behind her daughter R.Krithiga. Thereafter, the relationship between the Mythili's family and the respondent herein are not in cordial terms. It is also the alleged by the petitioner that Mythili has been ill treated by the respondent and the same was denied by her husband. According to him, Mythili was died due to medical ailment, inspite of better treatment. After the death of the mother/Mythili, the minor child was under the custody of



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petitioner and she was admitted in the Unity Matriculation School and subsequently, the Minor child R.Krithiga was taken away by the respondent.

It is alleged that from 2010 to 2013, the petitioner was not even permitted to meet his grand child. In the month of December 2013, the respondent got married to one Kalyani alias Kaviya and thereafter the petitioner was not even permitted to see his grand daughter. Hence, the petitioner lodged a complaint on 02.04.2014 before the Sub Inspector of Police, Sholinghur Police Station and the respondent also gave a counter complaint against the petitioner and his family members before All Women Police station at Villiwakkam. Even thereafter, the petitioner could not able to get the custody of his grand daughter, he was constrained to file GWOP.NO.24 of 2014 under Section 6 and 7 of Guardian and Wards Act 1890, seeking custody of the minor child R.Krithiga and to appoint the him as Guardian.

4. The father of minor child R.Krithiga filed counter affidavit and contended that he is a natural guardian and the child was under his custody till the year 2013, and he has taken care of the child with due care and affection. While being so, the petitioner taken away the custody of his child and in spite of his opposition and he denied various allegations which were



levelled against him. According to the respondent, the child was under his custody till May 2014 and during the summer vacation, he allowed the child to meet the grand parents, but they have not allowed the child to return back to her father and illegally confined the child under their custody, hence he has lodged a police complaint against them before All Women Police station at Villiwakkam. In the police station, it was advised that father of the child alone is entitled to take custody of the minor child. The petitioner is not entitled to claim himself as guardian of the minor child.

5. Before the Trial Court, on the side of the petitioner P.W.1 and P.W.2 were examined and Exs.P.1 to P.22 were marked in support of their petition. On the side of respondent R.W.1 was examined and Exs.R.1 to R.14 were marked in support of his contention.

6. After enquiry, the learned District Judge, based on the admission made by the petitioner that both sides were in cordial relationship even after the death of the mother of the child and only recently they had dispute over custody of child, due to the remarriage of the respondent, the learned judge has ordered that father is the fit person for keeping custody of child. It is



also held that there is no record placed before the Court by the petitioner that father of the child is acting against the welfare of the child. After considering the welfare of child, the father permitted to take custody of the child. Based on this finding, the learned Principal District Judge, Vellore has dismissed GWOP.NO.24 of 2014 filed by the petitioner herein. Aggrieved over the same, this Civil Miscellaneous Appeal has been filed.

7. Learned counsel for the petitioner submitted that the petition filed by the petitioner seeking guardianship was dismissed, however the custody of the child was not disturbed and admittedly, in this case the child is under the custody of the grand father from the year 2014 onwards and now the child is studying 12th standard. It is also stated by the learned counsel for the appellant that during the enquiry, the minor child was produced before this Court and on oral examination, the minor child has also expressed her willingness to continue to stay with the grand father. Hence prays to allow this Appeal and appoint the Grand father as Guardian and learned counsel for the appellant/ petitioner further submitted that this Court has also given an opportunity for the respondent to develop a cordial relationship with the child and advised him to meet the child regularly.



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8. Learned counsel for the respondent has submitted that as of now the father is meeting the child once in a week at the house of the petitioner herein and the relationship also well developed. The respondent is ready to take the custody if so permitted. It is also suggested by the learned counsel for the appellant that since the child is aged about 16 ½ years and the child is under the custody of the petitioner from 2014 and also the fact that the relationship between the father and the child also developed well, the same arrangements shall be made permanent if the father agrees for the same.

9. At this juncture, the learned counsel for the respondent has submitted that based on the order from this Court, he was able meet the child, otherwise, he may not have such opportunity, hence seeks to change the custody as per the order of passed by the Principal District Judge, Vellore.

10. I have considered the submissions made by both sides and perused



all the records.

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11. Admittedly, the child is 16 ½ years old. In the matter of custody, the willingness of the child is one of the factor to be considered. In this case, not only before the District Court, but also before this Court also the minor child has expressed her willingness to continue her custody with the grand father and soon she will become major. This Court has also seen that the relationship between the father and the child also slowly developing in a healthier way and if this arrangement continues, it would further benefit both the sides and also child.

12. Considering the fact that minor is also a girl child, special attention is required from the father as well the grand parents and to give quietus to the matter and to avoid further litigation among the parties, this Court is of the view that the custody of the minor child shall be under the grand father till she attains majority and the father of the child shall be entitled to visitation rights once in a week at the house of the petitioner and if the child express her willingness to go with the father, he may also take custody of child monthly twice in Sundays and if the child refuses to go with the father, in that case, the father is entitled only to see the child at the



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petitioner's house.

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13. With the above arrangement, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal District Judge,
Vellore.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K.RAJASEKAR,J.

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