



C.R.P.(MD) No.1637 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

C.R.P.(MD) No.1637 of 2023

and

C.M.P(MD) No.8090 of 2023

1.Prabhu

2.P.Maheswari

... Petitioners

Vs.

Vijaya

... Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the order dated 28.04.2023 made in I.A.No.1 of 2023 in GWOP No.136 of 2022 passed by the learned Principal District Judge, Dindigul.

For Petitioners : Mr.B.Jameel Arasu

ORDER

This civil revision petition is preferred by the petitioners in GWOP No.136 of 2022 on the file of learned Principal District Judge, Dindigul.



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2. The facts in brief are as follows:-

The first petitioner along with his brother namely, Sathya Sunder, who was married to Muneeswari Priya, were residing as a joint family members. His brother and his wife Muneeswari Priya were blessed with two daughters, namely, Aruthra and Krithika, who were minors. The said Sathya Sunder and his wife Muneeswari Priya died long back leaving behind the two minor children. In such circumstances, the first petitioner was looking after the two minor children by providing all comforts to them to live a peaceful life. While so, the respondent namely, Vijaya, who is a senior citizen and who happens to be the maternal grandmother of the children, has got a daughter suffering from cancer and not having enough means to look after that daughter itself. Hence, it would be difficult for her to maintain the minor children of Sathya Sunder, but she wants to keep the children with her without any means. In such circumstances, taking into consideration the welfare of the minor children, the petitioners have filed a petition under the Guardians and Wards Act in G.W.O.P.No.136 of 2022 against the respondent and also against the District Collector, Trichy, on the file of the learned Principal



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District Judge, Trichy, seeking for a declaration and to appoint him as a legal guardian of two minor children, namely, Aruthira and Krithika.

During pendency of the above G.W.O.P., the respondent, Vijaya has filed transfer petition in Tr.C.M.P.No.308 of 2022 before this Court seeking for transfer of the above GWOP from the Court of the learned Principal District Judge, Trichy to the Principal District Court, Dindigul and the same was allowed with a direction to dispose the said GWOP No. 136 of 2022 within a period of six months from the date of receipt of a copy of the order. Accordingly, the GWOP was transferred to the Court of Principal District Judge, Dindigul. However, the respondent was not inclined to proceed with the matter and never attended the hearings in the above GWOP on various dates. Thereafter, in the said circumstances, the respondent was set *ex parte* on 28.02.2023 and an *ex parte* order was passed in favour of the petitioner. Thereafter, the respondent filed I.A.No.01 of 2023 under Order 9, Rule 7 r/w 151 of CPC before the learned Principal District Judge, Dindigul, seeking to set aside the *ex parte* order. The said petition was allowed by the Court below without considering the averments made in the counter affidavit filed by



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the petitioner. Hence, the petitioner was constrained to file the above civil revision petition.

3. The learned counsel for the petitioner would submit that the respondent is aged person and she does not have sufficient means to take care of the minors and the petitioner has been taking care of the minors in all aspects. He would further submit that the petitioners filed detailed counter affidavit explaining all the lethargic attitude of the respondent and lack of interest in contesting the petition filed by her. Without adverting to the same, the learned Judge allowed the petition. Hence, the same is liable to be set aside.

4. Heard the learned counsel appearing for the petitioner and perused the records.

5. On perusal of records, it is seen that the main petition was transferred from the Principal District Judge, Trichy to the Principal District Judge, Dindigul as per the order of this Court dated 10.08.2022 and also a direction was given to the learned Judge to dispose of the said



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GWOP No.136 of 2022 within a stipulated period of six months in Tr.C.M.P(MD) No.308 of 2022. Thereafter, the main petition was posted for counter of the respondent on 28.02.2023. Since no counter was filed, the respondent was set ex parte. To give an opportunity to the respondent to put forth her case and to avoid multiplicity of proceedings, the Court below allowed the petition filed by the respondent and the same needs no interference. However, considering the facts and circumstances of the case and also welfare of the child, this Court directs the learned Principal District Judge, Dindigul, to dispose of GWOP No. 136 of 2022, within a period of two months from the date of receipt of a copy of this order, without any further delay by affording sufficient opportunities to both parties to put forth their contentions.

6. With the above direction, this Civil Revision Petition is disposed of. No costs.

12.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The Principal District Judge,
Dindigul.



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K.GOVINDARAJAN THILAKAVADI, J.

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Dated: 12.07.2023