



C.M.A(MD)No.40 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.40 of 2021

and

C.M.P.(MD) No.429 of 2021

Uthayarani @ Uthayaselvi

... Appellant

.VS.

Mohan

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 47 of the Guardian and Wards Act, 1890, to call for the entire records pertaining to the order passed by the learned Principal District Judge, Ramanathapuram, Ramanathapuram District, in G.W.O.P.No.7 of 2017 vide his order dated 10.06.2020 and set aside the same.

For Appellant : Mr.R.Anand

For Respondent : Mr.K.Balasundharam



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JUDGMENT

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This civil miscellaneous appeal is filed challenging the order passed in G.W.O.P.No.7 of 2017. The said G.W.O.P.No.7 of 2017 was filed by the respondent under Section 7(1) and 9 of the Guardians and Wards Act, for appointing him as guardian of the minor son.

2. It is seen from the petition averments that the marriage between the appellant and the respondent was celebrated on 14.11.2005. Due to wedlock, they had two children, namely one Archana and Nisanth. The appellant was not behaving properly and she used to throw the salary of the respondent when the respondent give it to her stating that it is a cheap amount. She refused to get conceived stating that if she gets conceived and delivered a baby, she would loose her beauty. Only after much pressurization, daughter Archana was born on 13.09.2006. The appellant had illicit intimacy with another person. When the respondent questioned about this, she picked up the fight with the respondent and left to her mother's house. She has not taken proper care of children and therefore, Archana had fallen from the first floor on 08.04.2011 and died. Appellant had left the house with jewels and Rs.10 lakhs worth articles.



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She would not take proper care of her minor child. Therefore, this petition.

3. All these allegations are denied in the counter affidavit filed by the appellant. It is specifically denied that she had illicit intimacy with another person and that she had not taken proper care of the children and therefore, her daughter had fallen from the first floor and died on 08.04.2011. In fact, respondent and his family members had been harassing the appellant seeking 15 sovereigns of gold jewels and Rs.2,00,000/-. Suspecting the paternity of minor Nisanth, appellant was beaten and sent out of home. She was not responsible for the death of daughter Archana. She is educating the minor son Nisanth.

4. During the course of enquiry before the trial Court, on the side of the respondent/petitioner P.W1 and P.W2 were examined and Ex.P1 to Ex.P26 were marked. On the side of the appellant/respondent, R.W.1 and R.W.2 were examined and Ex.R1 to R13 were marked.

5. On the basis of oral and documentary evidence produced, the learned Principal District Judge, Ramanathapuram, found that the



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respondent would be the proper person to take care of minor son Nisanth and appointed the respondent as legal guardian of minor Nisanth.

Challenging the said order, this Civil Miscellaneous Appeal is filed.

6. It is the submission of the learned counsel for the appellant that the trial Court based its decision by the extraneous documents, namely, Ex.P7 and P8. Ex.P7 is the complaint and Ex.P8 is the FIR. When it is not known whether the investigation in this case is completed and the charge sheet is filed, the decision given relying on these documents is not correct. The appellant had given a police complaint against the respondent in view of the cruelty committed against her. It shows that respondent is not a good person and appointing him as guardian of minor son, would not be in the best interest of the minor child. As a mother, the appellant is the best person to take care of the welfare of the minor child. Minor child would also feel safe in the care and custody of the appellant. Without considering any of these grounds, the learned Principal District Judge wrongly appointed the respondent as a guardian. Thus, she prays for setting aside the order of the learned Principal District Judge, Ramanathapuram, passed in G.W.O.P No.7 of 2017 dated 10.06.2020.



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7. In reply, the learned counsel appearing for the respondent submitted that the respondent is the natural as well as lawful guardian of the minor son and as he has permanent employment, he can provide better education and comforts to the minor child. Taking into consideration all the relevant factors, the learned Principal District Judge, rightly appointed the respondent as guardian of minor child. Thus, he prays for dismissal of this appeal.

8. Considered the rival submissions and perused the records.

9. Reading of the order of the learned Principal District Judge shows that at least three important circumstances influenced the mind of the learned Principal District Judge to take a decision to appoint the respondent as natural guardian of the minor child

(i) The marriage between the appellant and the respondent was legally terminated in HMOP No.65 of 2018. When the appellant and the respondent were living at Pattinamkathan, it is alleged that the appellant had eloped with one Gowthaman, a close relative to the family. In this regard, a complaint in Ex.P7 was given and FIR in Crime No.640 of



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2009 in Ex.P8 was registered. It is alleged in the complaint that Gowthaman had kidnapped the respondent's wife and child along with jewels. For the interest of the family, there was no specific mention that the appellant eloped with Gowthaman in the complaint.

(ii) The appellant started to move closely with one Muruganantham and she pledged her jewels with Gopal Ram Chit Finance taking Muruganantham with her and introducing Muruganantham as her husband. The pledging of the jewels is not disputed by the appellant.

(iii) When Archana, the daughter fell down from the building and died, it was found that the appellant had not taken proper care of the child and that no proper treatment was given to the child after she fell down from the building.

10. Apart from these circumstances, the learned trial Judge found that the respondent has permanent employment in transport corporation as Conductor, whereas the appellant has no permanent employment. Respondent's widowed sister along with her daughter, are living with the



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respondent family. Therefore, the respondent can take care of the minor child with the help of her sister and other family members. As per Section 6(a) of the Hindu Minority and Guardianship Act, 1956 the respondent is the natural guardian of the minor son.

11. This Court on going through the order of the learned Principal District Judge finds that the learned Principal District Judge has considered every aspect in detail and took a just decision in appointing the respondent as guardian of the minor son. It could also be seen there is no order passed with regard to custody of the minor child for the reason that in CRP(MD)No.2200 of 2019, the respondent was given liberty to take separate proceedings with regard to the custody of the minor child. It is informed that separate proceedings in G.W.O.P.No.45 of 2020 is pending on the file of learned Principal District Judge with regard to custody of minor son Nisanth.

12. Be that as it may, for the reason stated above, this Court finds that there is no cause to interfere with the well considered order of learned Principal District Judge, Ramanathapuram, in appointing the respondent as guardian of the minor Nisanth. In view of the matter, the



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order of Principal District Judge, Ramananthapuram is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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

17.10.2023

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To

The Principal District Judge,
Ramanathapuram,
Ramanathapuram District,



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G.CHANDRASEKHARAN,J.

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