



C.M.A(MD)No.1160 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.1160 of 2021

R.Balamurugan

... Appellant

.VS.

M.Nagalakshmi

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of Guardians and Wards Act, 1890, to set aside the judgment and decree made in GOP.No.53 of 2020 dated 28.09.2021 on the file of the Principal District Court, Thanjavur District.

For Appellant :Mr.V.P.Rajan
For Respondent :Mr.S.Sankar

JUDGMENT

This appeal is filed challenging the order passed in GOP.No.53 of 2020 dated 28.09.2021 on the file of the Principal District Court, Thanjavur District.



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2.The appellant filed a petition under Section 8 (2)(a) and Rule 10 of Guardian and Wards Act, 1890 to appoint him as Guardian for the minor child, Mirudhula, aged 2½ years and to direct the respondent to hand over the minor child to his custody.

3.The case of the appellant is that there is no marital relationship between the appellant and the respondent, but there was close relationship between them. Due to the close relationship, minor Mirudhula was born to the respondent on 06.05.2017. Minor Mirudhula is under the care and custody of the respondent. The respondent had already married one Mahendran and through him, she begot one female child, namely Thara. She is also under the care and custody of the respondent. The respondent has no sufficient means to maintain the children and therefore, she filed M.C.No.6 of 2018 on the file of the Chief Judicial Magistrate, Kumbakonam. After enquiry, the learned Chief Judicial Magistrate, Kumbakonam, ordered that the respondent is not the legally wedded wife of the appellant and the maintenance petition in respect of her was dismissed. However, the appellant was directed to pay a sum of Rs.4,000/- per month as maintenance to minor Mirudhula. The appellant is ready to maintain minor Mirudhula. The respondent has no



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sufficient means to maintain minor Mirudhula. In the said circumstances, this petition is filed.

4.It is seen from the records that notice was not served on the respondent. Since the whereabouts is not known and therefore, paper publication was effected. Thereafter, the respondent was set *ex parte*. After recording the *ex parte* evidence, the learned Judge found from the oral and documentary evidence that the appellant is not entitled for the prayer sought for. The reasons according to the learned Principal District Judge, Thanjavur, are that i) welfare of the minor child is a paramount consideration, ii) The minor Mirudhula was only 2½ years old on the date of filing the petition and from the date of her birth, she was taken care of by her mother/respondent. In the said circumstances, appointing the petitioner as Guardian and handing over the custody of the minor child to him will not be fair and proper in view of the tender age of the minor child. In this view of the matter, the learned Principal District Judge, Thanjavur, dismissed the petition granting the right of visitation in the following manner:-

“i) Whenever the petitioner wants to visit the minor child, prior intimation shall be given to the respondent;



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ii) The respondent shall make arrangements for the visitation by the petitioner;

iii) Venue and time of visit shall be decided by the petitioner and the respondent;

iv) If the minor child wishes to be with the petitioner for a week end or vacation, the petitioner and the respondent shall make discuss and arrange for the same.”

5.It is submitted by the learned counsel for the appellant that when the respondent filed the maintenance petition claiming maintenance for maintenance to herself and her daughter, it goes without saying that she has no means to maintain herself and the minor child, Mirudhunal. She has also one more daughter through her first husband. When she is not able to maintain herself and her minor child, it is just and appropriate that the custody of the minor child should be handed over to the appellant after declaring him as Guardian.

6.The learned counsel for the respondent supported the finding of the learned Principal District Judge, Thanjavur, and submitted that the minor girl should be only with the mother, namely the respondent. Thus, he prayed for dismissal of the appeal.



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7.Considered the rival submissions and perused the records.

8.As per Section 6(a) of Hindu Minority and Guardianship Act, 1956, in case of a boy or an unmarried girl, the father, and after him, the mother, is a natural guardian. However, the custody of a minor child, who has not completed the age of five years, shall ordinarily be with the mother. For better understanding, Section 6(a) of Hindu Minority and Guardianship Act, 1956, is extracted hereunder:-

“6.(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;”

9.Admittedly, on the date of filing of the petition, the minor girl, Mirudhula was only 2½ years. May be, she has now completed 5 years. Still, she is a girl and the best person to take care of her welfare is the mother. Even from the petition averments, it is clear that there was no valid marriage taken place between the appellant and the respondent. The minor Mirudhula was born through an intimate relationship between



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them. The appellant is not ready to accept the respondent as his wife as seen from the contest made and the order passed by the learned Principal District Judge, Thanjavur, wherein it is held that the respondent is not his legally wedded wife.

10.The learned Judge while dismissing the petition has considered the appellant's right to visit the minor child and passed necessary orders with regard to visitation right as extracted above. As a girl child gets some physiological and psychological changes while approaching puberty bodily, she can only share her changes and anxiety, freely with her mother and not with the father. It is settled proposition of law that the welfare of the minor child is a paramount consideration, in case if in child custody matters. The learned Judge found that for the welfare of the minor child at the tender age, it is better for her to stay with her mother. This Court finds no reason to take a different view of the matter.

11.In this view of the matter, this Court confirms the order passed by the learned Principal District Judge, Thanjavur in GOP.No.53 of 2020 dated 28.09.2021.



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12.In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

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

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To

The Principal District Judge,
Thanjavur.



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G.CHANDRASEKHARAN,J.

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