



C.M.A. (MD)No.1183 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1183 of 2022

and

C.M.P.(MD) No.12039 of 2022

Poongodi

...Appellant/ Respondent

Vs.

Manikandan

... Respondent/Petitioner

PRAYER: This Civil Miscellaneous Appeal is filed under Section 47 of the Guardians and Wards Act, to set aside the Clause (2) and Clause (3) of the Decretal order dated 06.08.2022 passed in G.W.O.P.No.47 of 2017 on the file of the First Additional District Judge, Madurai.

For Appellant : Mr. G.Aravinthan
For Respondent : Mr.N.Chandran

JUDGMENT

This appeal has been filed by the wife/appellant challenging an order of granting visitation rights to the father/respondent to see his two minor children.



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2. A marriage between the appellant and the respondent was solemnized on 18.05.2008 and two children were born in the year 2009 and 2012 respectively. Since their matrimonial life became strained, there was some dispute arose between them and the appellant left from the matrimonial home and filed an application for divorce in H.M.O.P.No.36 of 2015 and the children were also taken to the parental home by the appellant. Hence, the respondent has filed a petition in G.W.O.P.No.47 of 2017 seeking custody of his minor children.

3. Before the trial Court, on the side of the respondent herein, he has examined as P.W.1 and 23 documents were marked as Ex.P.1 to Ex.P.13. On the side of the appellant herein, three witnesses were examined as Ex.R.1 to Ex.R3 and 2 documents were marked as Ex.R1 and Ex.R2.

4. Based on the materials and evidence available on record, the trial Court taking note of the fact that the husband is working as VAO and the children are all along with wife, refused to order custody of the children to father. However, considering the paramount welfare of the children, granted visitation right to the respondent/husband twice in a month. Further, directed to hand over



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the children to the respondent/father on 2nd and 4th Sunday in every month, particularly, when there was no exams, from morning 08.00 am., to 06.00 pm.

Challenging the said visitation right granted by the trial Court to the father of the minor children, the present appeal came to be filed by the wife.

5. I have heard the learned counsel appearing on either side and also perused the materials available on record.

6. In view of the above submission, now the points arise for consideration are as follows:

(1) Whether the custody of the children has to be handed over entirely to the respondent?; and

(2) Whether the order of the trial Court suffers from any infirmity?.

7. At the outset, this Court is of the view that the present appeal itself is misconceived. Merely because the matrimonial relationship is strained between the husband and wife, the children cannot be denied the right of having the accompany of the parents.



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8.A perusal of the evidence and judgment of the trial Court, it is made clear that the children was given atmosphere to have the company of their father by taking note of the paramount interest of the children. Once the children is totally removed from the company of any spouse, that will lead serious consequences. It will affect psychological aspect of the children also. Therefore, this Court is of the view that mere granting visitation right to the father cannot be faulted. In such view of the matter, I do not find any merit in the appeal. Accordingly, the appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.03.2023

Index : Yes/No

Internet : Yes/No

Rmk

To

1.The First Additional District Judge, Madurai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

Rmk

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