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O.P.No. 529 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

O.P.No.529 of 2023
and A.No.4672 of 2023

Judgment reserved on 04.09.2024	Judgment pronounced on .09.2024
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Dr.B.Dhanasekar

...

Petitioner

Vs.

Dr.R.Ishwaryalakshmi

...

Respondent

PRAYER: Original Petition filed under Sections 3, 7 to 10 and 25 of the Guardians and Wards Act, 1890, r/w Section 13(1) of Minority & Guardianship Act, 1956 and Order XXI Rule 2 & 3 of Original Side Rules, r/w Clause XVII of Letters Patent Act to declare the petitioner as guardian person of the minor child D.Dhiyaasri, aged 10 years and to have custody of the child to the petitioner.

For Petitioner : Mr.S.Senthil

For Respondent : Mr.Prahalad Bhat K



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ORDER

Parties are referred to as father and mother for the sake of convenience.

2. The petitioner/father filed the above petition under Sections 3, 7 to 10 and 25 of the Guardians and Wards Act, 1890, r/w Section 13(1) of Minority & Guardianship Act, 1956 and Order XXI Rule 2 & 3 of Original Side Rules r/w Clause XVII of Letters Patent Act.

3. The minor child Dhiyaasri, born on 26.06.2012. The marriage between the parties was solemnized on 05.09.2010 according to Hindu rites and customs at M.S.V. Thirumana Mandapam, Reddypatti bypass Junction, Salem. Both the petitioner as well as respondent are doctors. The petitioner is running a clinic by name Dhiya Clinic in Tharamangalam, Salem District and the respondent is working as a duty doctor in Sri Annapoorna Medical College and Hospital, Salem.



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4. Due to matrimonial dispute, it is stated that the respondent/mother left the matrimonial home on 18.12.2017. It appears from the pleading that the petitioner/father filed divorce petition under Section 13(1a) (1b) of the Hindu Marriage Act on 22.12.2022 before the Sub Court, Omalur in HMOP No.195 of 2022 and the respondent/wife filed HMOP No.78 of 2023 before the Family Court, Salem for restitution of conjugal rights.

5. It is admitted by both the parties that both the parents are living in Salem and the minor Dhiyaasri is in the care and custody of the respondent/mother and residing in respondent's house at 'D' Block No.4, Rank – Apple Ridge Apartment, 110 Sri Ram Nagar, Narosothipatti, Salem. The child, mother and father are all residing in Salem. The child is 10 years old now studying 5th standard in Sri Chaitaniya CBSE School, Salem. Both the father and mother filed two cases before Salem Court. The present application is filed by the husband namely father of the minor child for appointing him as guardian and for interim custody and for visitation rights at Chennai.



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6. This court is conscious of the judgment of the Full Bench of this Court dated 02.09.2022 made in GWOP No.599 of 2018 wherein the Full Bench has held that in respect of guardian OP, the Original Side of Madras High Court as well as the Family Court / PDJ Court are having concurrent jurisdiction over the point.

7. This Court has noticed that when all the parties are residing at Salem and there is a Family Court functioning at Salem and the minor is alongwith the mother at Salem and the address of the minor as well as the petitioner and respondent are all in 5 kms. away from Family Court at Salem, it appears that the petitioner/father has chosen to file GWOP before this Court.

8(a) Noticing the fact that for the purpose of appointment of guardian, the Court has to interact with the minor girl and to elicit the situation, to ensure the welfare of the minor child. For such interaction, the minor girl has to travel from Salem to Chennai 700 kms. to and fro, besides she has to be accommodated by mother, besides the mother has to be



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accommodated by some other person, besides over night stay, subject to availability of train tickets.

8(b) Hence, on 19.08.2024, this Court called upon both the learned counsel for the parties as to why the case should not be transferred to Family Court, Salem so that alongwith two applications which are pending before the Salem Court can be decided and unnecessary travel of the minor child who is now studying 5th standing would not be disturbed besides causing a total inconvenience to the mother and the relatives in bringing the child to Chennai.

9. At this juncture, the learned counsel for the respondent/mother would state that the petitioner/father has not paid the school fees of the minor girl and hence the respondent/mother is only paying the school fees and so far she has paid Rs.3.50 lakhs towards school fees.

10. The learned counsel for the respondent/mother would further state that when two matrimonial proceedings are pending before Family Court which is the nearest place for both the parties, in order to cause



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inconvenience to the respondent/mother and to disturb the minor child with ulterior motive, the petitioner/father has filed GWOP before the High Court only to harass the respondent/mother and sought for suitable orders.

11. HMOP No.195 of 2022 is filed by the petitioner/father for divorce and HMOP No.78 of 2023 is filed by the respondent/mother for restitution of conjugal rights. The case is pending before Family Court, Salem. All the parties are residing in Salem which is the closest place to the Family Court / Principal District Court, Salem. Taking into consideration the welfare of the minor child which is the paramount consideration for determining guardian OP, it would be served if the case is transferred to PDJ Court, Salem to be tried which will ensure convenient travel by all the parties to the lis.

12. In view of the above matter, Registry is directed to transfer this GWOP No.529 of 2023 to the file of the Principal District Court, Salem for proper disposal and the learned Principal District Judge, Salem shall re-number the case, issue notice to the parties and determine the case in



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accordance with law, either by himself or as per the rules made over to Family Court.

13. This petition is disposed of accordingly. In view of the relationship among the parties, no order as to costs. Consequently, connected application is closed.

11.09.2024

rgr

Neutral Citation: Yes/No

Speaking order : Yes/No



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RMT.TEEKAA RAMAN, J.

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