



C.M.A. No.1881 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1881 of 2021
and
C.M.P. No.10138 of 2021

R. Theerthagiri Appellant
vs.

1. Devaraj
2. Amudha Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 47 of the Guardians and Wards Act, 1890 against the order of the Principal District Judge's Court at Dharmapuri, dated 04.03.2021 in G.O.P. No.48 of 2020.

For Appellant : Mr.P. Valliyappan

For Respondents : No appearance

JUDGMENT

This appeal has been filed by the father challenging the order dated 04.03.2021 passed by the Principal District Court, Dharmapuri in G.O.P. No.48 of 2020.



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2. By the impugned order, dated 04.03.2021, the petition filed by the appellant under Section 10 of the Guardians and Wards Act seeking to appoint him as the guardian for the Minor T. Thaswika and to direct the respondents to handover custody of the Minor T.Thaswika to him, has been dismissed on the ground that the Minor child was not examined and there is no guarantee given by the appellant that he shall not re-marry.

3. Before going into the merits of the matter, it is to be noted that both before the Principal District Court, Dharmapuri in G.O.P. No.48 of 2020 as well as before this Court, the respondents have remained ex-parte, despite service of notice on them. It is also to be noted that to give one more opportunity for the respondents to enter appearance in this matter, a direction was issued to the learned counsel for the appellant to intimate the next date of hearing to the respondents by Registered Post with Acknowledgement Due. As directed by this Court, the learned counsel for the appellant has also sent a communication to the respondents dated 10.06.2024 intimating the next date of hearing as 02.07.2024. An Affidavit of Service has also been filed enclosing the communication of the learned counsel for the appellant, dated 10.06.2024



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along with the acknowledgement cards received by the respondents.

Despite the same, the respondents have chosen not to enter appearance in this matter.

4. Heard Mr. P. Valliyappan, learned counsel for the appellant.

5. The appellant got married to Vennila on 09.04.2017. Out of the wedlock, they had a Daughter by name T. Thaswika, who was born on 31.07.2018. However, due to Jaundice (Hepatitis), the appellant's wife Vennila died on 24.10.2020. The respondents are the grandparents of Minor T. Thaswika, who is the appellant's daughter. According to the appellant, after the death of his wife, his Minor Daughter was under the care of the respondents for a few days. According to the appellant, the respondents gave assurance that they would hand over the Minor T.Thaswika to him after completion of funeral ceremonies i.e., 11th day funeral rites. However, according to the appellant even after completion of funeral ceremonies, the respondents refused to hand over custody of his Minor Daughter T. Thaswika. As seen from the petition filed by the appellant before the Principal District Court, Dharmapuri, several attempts were made by the appellant to get custody of his Minor



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Daughter T. Thaswika from her grandparents, the respondents herein, but despite the same his attempts went in vain. According to the appellant only under those circumstances, he was constrained to file a petition under Section 10 of the Guardians and Wards Act, 1890 for the reliefs as prayed for by him, as stated supra. However, the respondents remained ex-parte before the Principal District Court, Dharmapuri in G.O.P. No.48 of 2020.

6. Before the Principal District Court, Dharmapuri in G.O.P. No.48 of 2020, the appellant had filed 12 documents, which were marked as Exs.P1 to P12. On his side, three witnesses were also examined viz., the appellant himself as PW1, Vengammal as PW2 and Kiliammal as PW3 respectively. PW2 and PW3 were the close relatives known to both the parties.

7. The Principal District Court, Dharmapuri, under the impugned judgement and decree, dated 04.03.2021 has dismissed G.O.P. No.48 of 2020 on the following grounds :-

- a) there is no guarantee that the petitioner will not get re-married.
- b) the Minor child T. Thaswika has not been examined and her



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opinion with whom, she wants to live with, is not available on record.

However, the Principal District Court in G.O.P. No.48 of 2020 has held that the appellant is the Father and Natural Guardian of the Minor child T. Thaswika.

8. Aggrieved by the judgment and decree of the Principal District Court, Dharmapuri passed in G.O.P. No.48 of 2020, under which, the petition filed by the appellant under Section 10 of the Guardians and Wards Act has been dismissed, this appeal has been filed.

9. As seen from the Exhibits, which were marked on the side of the appellant before the Principal District Court, Dharmapuri, documents have been produced by the appellant to prove that he is the Father of his Minor Daughter T. Thaswika. He has also filed documents to prove that Vennila is his wife and she died on 24.10.2020. The death summary of his wife Vennila has also been marked as Ex.P3 to confirm that she died only due to the fact that she was suffering from Jaundice (Hepatitis) and it was a natural death. Since the respondents failed to hand over the custody of the appellant's Minor Daughter T. Thaswika to him, the appellant has also lodged a complaint with Adhiyamankottai Police



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Station, which has been proved by marking of Exhibits viz., Exs.P7, P8 and P9. The appellant has filed his Aadhaar Card (Ex.P10) and his Family Card (Ex.P11), which will reveal that Vennila is his wife and T.Thaswika is his Daughter. As seen from the evidence available on record, no counter complaint has also been lodged by the respondents against the appellant. The respondents have remained ex-parte both before the Principal District Court in G.O.P. No.48 of 2020 as well as before this Court in this appeal. Being a child custody matter, despite completion of service on the respondents in this appeal and to give one more opportunity for the respondents to enter appearance in this appeal, this Court had also directed the learned counsel for the appellant to intimate the next date of hearing to enable the respondents to enter appearance, as observed supra. The learned counsel for the appellant has also complied with the directions of this Court and sent a communication on 10.06.2024 to the respondents, which has been duly acknowledged by them. As seen from the said communication, dated 10.06.2024, the respondents were informed about the next date of hearing (02.07.2024). Despite the same, for the reasons best known to the respondents, they have chosen not to enter appearance in this appeal.



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10. Admittedly, the appellant is the Father and Natural Guardian of the Minor T. Thaswika. The Guardian Original Petition was filed by the appellant before the Principal District Court, Dharmapuri in G.O.P. No.48 of 2020, within 46 days from the date of the death of Vennila, his wife. There was no delay on the part of the appellant to file the petition seeking for custody of his Minor Daughter under Section 10 of Guardians and Wards Act, 1890.

11. The Trial Court in G.O.P. No.48 of 2020 has dismissed the petition by giving flimsy reasons, which are stated hereunder :-

a) There is no guarantee that the appellant will not get remarried and in case of remarriage, he cannot be granted custody of his Minor Daughter.

b) The Minor T. Thaswika was not enquired in G.O.P. No.48 of 2020 to ascertain as to whether she is willing to live with her Father after the death of her Mother.

12. Being the Father and the Natural Guardian, that too, when the respondents have not lodged any complaint against him on account of any bad conduct on his part, as a Father, the appellant is legally entitled



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to have custody of his Minor Daughter T. Thaswika. The respondents cannot retain custody of the appellant's Minor Daughter T.Thaswika.

The appellant has taken all efforts to get custody of his Minor Daughter T. Thaswika, as seen from the evidence placed on record before the Principal District Court, Dharmapuri.

13. In fact, he has also lodged a compliant with the Police against the respondents seeking custody of his Minor Daughter T. Thaswika. There was also no delay on the part of the appellant to file the petition under Section 10 of the Guardians and Wards Act, 1890 in G.O.P. No.48 of 2020 as the said petition was filed, within 46 days from the date of death of his Wife Vennila. It is also seen from the evidence available on record that only under natural circumstances, his wife died. The appellant's wife died as a result of Jaundice (Hepatitis). The reasons given by the Principal District Court, Dharmapuri under the impugned order are flimsy and baseless and those reasons cannot be a ground for refusing to grant custody of the Minor to the appellant. As a Father and Natural Guardian and that too, when there is no evidence to prove that he is not having the capacity to have custody of his Minor Daughter, this Court is of the considered view that the Principal District Court,



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Dharmapuri, under the impugned order passed in G.O.P. No.48 of 2020 has committed a grave error by dismissing the petition filed by the appellant under Section 10 of the Guardians and Wards Act. The findings rendered by the Principal District Court, Dharmapuri under the impugned order are perverse findings and are unsustainable, in view of the reasons stated supra.

14. In the result, the impugned order of the Principal District Court passed in G.O.P. No.48 of 2020 is hereby set aside and this appeal is allowed. The respondents are directed to hand over custody of the Minor Daughter of the appellant T.Thaswika, within a period of two weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

03.07.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2



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ABDUL QUDDHOSE, J.

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To

1. The Principal District Judge
Dharmapuri.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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