



C.M.A.No.1438 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.No.1438 of 2024
and
C.M.P.Nos.12546 and 12548 of 2024

L.Pradeep Kumar

... Appellant

VS.

S.Suganya

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984 and Section 47 of the Guardianship and Ward Act r/w Order LX1 Rule 1 of Code of Civil Procedure, to set aside the judgment and decree dated 18.03.2024 in G.O.P.No.176 of 2020 on the file of the Family Court, Salem.

For Appellant : Mr.V.Sekar

JUDGMENT



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(Judgment of the Court was made by P.DHANABAL,J.)

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This Civil Miscellaneous Appeal is filed as against the order passed in G.O.P.No.176 of 2020 on the file of Family Court, Salem, dated 18.03.2024, wherein the respondent herein has filed a petition under Section 25 of the Guardians and Wards Act, 1890, to declare her as guardian for the minor daughter Meenakshi and hand over the custody of the minor child to her mother. The said petition was allowed. Aggrieved by the said order, the present appeal is filed by the appellant/father.

2. The brief averments of the petition are as follows:-

The appellant and respondent herein are husband and wife and their marriage took place on 16.02.2011 as per the Hindu Customs and Rites. Thereafter, both the appellant and respondent went to Pilani, Rajasthan State and stayed there and thereafter, they shifted the residence to Madurai. Due to the wedlock, a female child namely Meenakshi was born to them on 29.06.2013. After birth of the female child, the appellant herein used to torture the respondent. On 21.05.2016, the appellant assaulted the respondent and also abused obscene words and had forcibly taken the



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minor child and sent to her parent house. Thereafter, on 04.06.2016, the petitioner went to the house of the respondent to see her child and to live with the respondent. At the time, he threatened with billhook to kill her and also he refused to give minor child to the petitioner. Therefore, she gave a complaint before the Suramangalam Police Station and they enquired the matter. At the time, the police handed over the child to her and the respondent was permitted to take the child on every Sunday and he also return the child to the custody of the petitioner. Whiles, in the month of September, 2016, the respondent taken the child but thereafter, he did not return. The child is very eager to live with the petitioner and she is very affectionate towards the child. The petitioner can very well educate the female child and she is the proper guardian to the minor child, she never act as against the interest of the minor. The respondent is residing along with his sister, therefore, it is not appropriate to have the custody of the minor child and the custody of the minor child has to be with the petitioner. The respondent also filed a petition in F.C.O.P.No.42 of 2017 for divorce and the same is also pending. In the said divorce proceedings, the petitioner filed an I.A.No.298 of 2018 and she was permitted to have the custody of the minor child on every Sunday. Since the minor child is only aged about



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7 years, considering her future, it is appropriate to hand over the custody to the petitioner. Therefore, she filed the petition.

3. The brief averments of the counter affidavit are as follows:-

It is admitted that the date of marriage and they initially lived at pilani, Rajasthan. Even during they stayed at Pilani, the petitioner used to make quarrel with the respondent, most of the times she was not cooking. The petitioner used to spit on the elder who advised her. Thereafter, the petitioner was taken to Madurai Meenakshi Mission Hospital to consult Psychologist and she advised that after conceiving the child, there will be chance for normalcy. Thereafter, a female child namely Meenakshi born to them on 29.06.2013. The petitioner has been adamant that the child as to act as per her direction and she not even allowed the respondent to give proper medical aid to the child. The petitioner not even cared about child and she used to make quarrel with the respondent and most of the times, she spent for seeing mobile. The respondent is very affectionate towards the petitioner and the minor child. The petitioner being the mother failed to take care of the child. The petitioner not even given proper food to the



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child. The petitioner also used to torture the minor child. The respondent is living with his widowed mother and unmarried sister. The child is under the care and custody of the respondent from 21.05.2016. The petitioner also gave a complaint before the Suramangalam Police Station and the same was closed after enquiry and the police advised the respondent to give the custody of the minor child to the petitioner/mother, since she is tender age child. Thereafter, since the petitioner did not take care about the child and again, in the month of July-2016, the child was handed over to him. By suppressing the above said facts, the present petition is filed. Therefore, the petition is liable to be dismissed.

4. Before the Trial Court, on the side of the petitioner/wife, she was examined as PW.1 and marked Ex.P1 to P6. On the side of the respondent/husband, he was examined as RW.1 and one Sumathi was examined as RW.2 and marked Ex.R1 to R4.

5. After hearing both sides, the Trial Court has allowed the petition. Aggrieved by the said order, the present appeal is filed.

6. Considering the nature of the appeal and as agreed by the learned



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counsel for the appellant, this Court is inclined to dispose the case at the stage of admission itself.

7. The learned counsel appearing for the appellant would contend that the appellant and respondent are husband and wife and their marriage took place on 16.02.2011 at Salem and thereafter, a female child born to them on 29.06.2013. After the marriage, they lived on various places, lastly they resided at Salem. The respondent very often used to make quarrel with the appellant and thereafter, she has not changed her attitude and she has also threaten to commit suicide, the respondent did not take care of the child, the appellant is very affectionate towards the minor child, the respondent not even given food properly. Therefore, she handed over the minor child to the appellant and left the matrimonial home. Thereafter, the minor child was under the custody of the appellant. Whiles, on 07.06.2016, the respondent lodged a complaint before the Suramangalam Police Station and as per the advice of the police, the appellant handed over child to the respondent and thereafter, the respondent did not take care of the minor child and thereby, again she gave a complaint before the Police Station and the police advised her to hand over the child to the appellant.



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Therefore, the minor is under the care and custody of the appellant from the month of July, 2016. Thereafter, the appellant filed H.M.O.P.No.42 of 2017, for divorce. While the petition is pending, the respondent herein filed an application for interim custody of the minor child and the Trial Court had given the custody of the minor child on every Sunday. While the facts are being so, the respondent filed present petition with false averments. The Trial Court without considering the case of the appellant erroneously allowed the petition and appointed the respondent as guardian for the minor child and handed over the custody of the minor to the respondent. Therefore, the order passed by the Trial Court is liable to be set aside by allowing this appeal.

8. This Court heard petitioner side and perused the records.

9. On perusal of records, it observed that the present appeal is filed by the appellant/father as against the order passed by the Trial Court by appointing the respondent/mother as guardian to the minor child namely Meenakshi and handed over the child to the respondent/mother. It is admitted fact that the minor child was initially under the custody of



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respondent/mother and thereafter, the custody of the minor child was entrusted to the appellant/father. Again, as per the instructions of the police, the minor child was handed over to the respondent/mother and again, as per the direction of the police, the minor child was handed over to the custody of the appellant/father and the appellant had the custody of the minor child, during the pendency of the main petition.

10. This Court perused the entire Trial Court records and the grounds urged by the appellant and the Trial Court considering that the child is female and she aged about 7 years and taking into consideration of the welfare of the minor child, appointed the mother as guardian and also directed to hand over the custody of the minor daughter to the mother/respondent.

11. It is well settled law that as far as the custody of minor child is concerned, the rights of the parties is immaterial and welfare of the minor child is paramount consideration, therefore, considering the age of the minor that she is only aged 7 years, it is appropriate to declare the mother as guardian. The Trial Court correctly passed the order by appointing the



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mother as guardian and also directing the father to hand over the custody of the child to the respondent/mother. Therefore, there is no any merits in this appeal and the Trial Court order does not suffer any infirmity. Therefore, this Court is of the view that this Civil Miscellaneous Appeal is liable to be dismissed at the admission the stage itself.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

(J.N.B.J.) & (P.D.B.J)
25.06.2024

dm

Internet : Yes/No
Index : Yes/No
Neutral Citation : Yes/No

To

The Family Court, Salem.



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J.NISHA BANU,J
and
P.DHANABAL,J

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