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OSA No.108 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Original Side Appeal No.108 of 2023
and
C.M.P.No.12727 of 2023

A.Aashifa Begum .. Appellant

Versus

1.Khader Beevi
2.M.A.Amanullah Khan .. Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules r/w Clause 15 of the Letters Patent against the fair and decreetal order dated 06.06.2023 in A.No.2690 of 2023 in O.P.No.188 of 2023.

For Appellant : Mrs.Chitra Sampath, Senior Counsel
For Mr.K.Shanker

For Respondents : Mr.S.Prabhakaran, Senior Counsel
For Mr.G.Anandaraj

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J)

The Original Side Appeal has been instituted against the order and decreetal order dated 06.06.2023 passed by the learned Judge in A.No.2690 of 2023 in

O.P.No.188 of 2023.



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2. The respondents herein, who are the in-laws of the appellant, has preferred a petition in O.P. No. 188 of 2023 for grant of permanent custody and appointing them as guardian of their minor grandchild by name Nuha Aalima born on 03.09.2021. According to the respondents, their only son viz., Abdul Hameed married the appellant on 02.09.2020 and out of the said wedlock, a female child by name, A.Nuha Aalima was born on 03.09.2021. While so, the son of the respondents died on 21.10.2022. Thereafter, dispute arose between the parties, which resulted in registration of the criminal cases against them. During the course of enquiry, an agreement was entered into between the parties on 03.11.2022 and as per the same, the custody of the child was given to the appellant and the visitation rights to the respondents herein. Contrary to the same, the appellant refused to permit the respondents to have their visitation rights of the minor grandchild. Feeling aggrieved, the respondents preferred the original petition.

3. Pending the aforesaid original petition, the respondents filed certain applications, the details of which read as follows:

- A. No. 2690 of 2023 - grant of visitation rights of their minor grandchild;
- A. No. 2691 of 2023 - grant of interim custody of their minor grandchild; and
- A. No. 2692 of 2023 - direct the appellant to comply with the terms and conditions of the agreement dated 03.11.2022 in respect of child visitation.

4. On 06.06.2023, when all these applications were taken up for consideration, the learned Judge has passed the following order:

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"Various applications have been filed by the petitioners who are seeking custody of the minor child being their granddaughter.

2.The minor child was born to their deceased son and that the minor child is aged about 1 year & 9 months. They had also sought visitation rights to meet their granddaughter.

3.Learned counsel appearing on behalf of the respondent mother would express fear of threat and coercion on the side of the petitioners. She would also submit that due to the activities of the grandparents viz., the petitioners herein, she had approached the Police Authorities to seek her protection.

4.Considering the various aspects and also the fact that the petitioners are the grandparents of the minor child who had lost their dear son, I am of the view that they may be permitted to meet the minor child. However, considering the various apprehensions on the side of the respondent, it would be better if such visitation of the grandparents to meet their granddaughter shall take place at the Child Care Centre attached to the Family Court, Chennai on 1st and 3rd Saturdays of every month between 3.00 P.M. & 5.00 P.M., this interim arrangement is made till all the applications are disposed of.'

Aggrieved by the aforesaid order granting visitation rights to the respondents, the appellant / daughter-in-law has preferred this original side appeal.

5. The learned senior counsel appearing for the appellant submitted that in the wake of the unfortunate events surrounding the illness and subsequent demise of the appellant's husband, the respondents responded unfavorably by unjustly blaming the appellant, spreading unfounded rumours about her and branding her as inauspicious. Adding salt to injury, during the 7th day ceremony, the respondents treated the appellant cruelly, accusing her of causing her husband's death. On 27.10.2022, when the appellant's parents visited the respondents' house to take the appellant and the minor child, the respondents not only refused, but also went to the extent of locking themselves in a room with the



child. Subsequently, due to a confrontation on 29.10.2022, the appellant was compelled to leave her matrimonial home. Thereafter, under duress, she signed a mediation agreement on 03.11.2022 before the police authorities. Despite the child being eventually returned to the appellant, the harassment from the respondents continued. The respondents' neglect of the child's health, leading to some infections, and their alarming threat to throw the child from the third floor deeply concerned the appellant. Seeking medical attention for the child, the appellant requested temporary custody, which was reluctantly accepted by the respondents, who later forcibly took the child from the appellant's residence. On 05.12.2022, the respondents, along with rowdy elements, vandalized the appellant's parents' house, resulting in the filing of two FIRs against them. Hence, the learned senior counsel submitted that the grant of visitation rights to the respondents would affect the welfare of the child. It is also submitted that when the respondents are not entitled for the custody of the child, they are also not entitled for visitation rights and therefore, the interim order passed by the learned Judge will have to be set aside.

6. Per contra, the learned senior counsel appearing for the respondents submitted that the respondents have already been deeply affected by the death of their only son; and the further actions of the appellant and her parents were annoying the respondents' distress. The learned senior counsel further submitted that the economic position of the appellant's parents' is very limited and hence, allowing the child to reside in such an environment would be detrimental, lacking discipline, ethics, values, morals, and compassion. On the other hand, the



respondents are owning more than two properties in and around Chennai and they will be able to take care of the child in a good manner than the appellant.

Therefore, in the best interest of the minor child, the respondents filed the original petition seeking permanent custody. Taking note of the facts and circumstances of the case, the learned Judge granted visitation rights only for two hours on two days in a month by the order impugned herein. However, in order to cause trouble to the respondents, the appellant has preferred this appeal. Therefore, the learned senior counsel prayed for appropriate order in this appeal in favour of the respondents.

7. Heard both sides and also perused the materials available on record.

8. The challenge before us is to the grant of visitation rights to the respondents / grandparents by the learned Judge as an interim measure. The appellant has raised several allegations against the respondents including harassment, neglect of the child's health, forcibly taken away the child, vandalizing her parental home, etc. and therefore, the respondents are not entitled for custody as well as visitation rights of the minor child. She further alleged that the mediation agreement dated 03.11.2022 was signed by her under duress.

9. On the other hand, it is the case of the respondents that they have already been affected by the death of their only son; and that, they own substantial properties in Chennai and sufficient means to secure the child's future, whereas, the appellant's parents have limited means, which would be detrimental for the proper upbringing of the child, if she is in their custody.



10. Upon considering the rival submissions, this court is of the view that truthfulness of the allegations raised by the parties cannot be gone into in this appeal and the same can be determined only after full fledged trial, based on the oral and documentary evidence adduced by them. However, this court has to decide as to whether the grant of visitation rights to the respondents / grandparents by the learned Judge is sustainable.

11. In custody / guardianship matters, the courts have to consider the welfare of the minor child, which is a paramount consideration and to ensure and safeguard family system in the country, which is fast eroding and to ensure that there is overall development of the minor child and there is proper environment and upbringing of the child and therefore, the best interests of the child are taken care. In the present case, admittedly, the minor child as on date is at the tender age of 2½ years (born on 03.09.2021) and therefore, the appellant / mother can claim custody over the minor child. At the same time, the grandparents cannot be denied reasonable access/visitation rights, which will also help the child's normal development. An affectionate relationship with grandparents is recognised as beneficial for the child. It is to be pointed out at this juncture that the minor child had been under the grandparents' care since birth, which was disturbed due to the strained relationship between the parties.

12. Upon weighing the totality of facts and circumstances of the case, this court is inclined to modify the order of the learned Judge, granting visitation rights



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to the respondents / grandparents, by restricting it to once in every month, i.e., the first Saturday from 2.00 pm to 6.00 pm at the Child Care Centre attached to the Family Court in Chennai. The appellant shall personally bring and leave the child for visitation. The parties are at liberty to have amicable settlement between themselves or to approach the learned Judge, for any other relief. All the contentions raised herein are left open to be adjudicated in the pending applications and original petition.

12. This Original Side Appeal is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
05.03.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation: Yes / No

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