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C.R.P. (PD) .No.4663 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4663 of 2024
and C.M.P.No.26050 of 2024

R.Sathiya

.. Petitioner

Vs.

1.T.Sivakumar

2.S.Saranya

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and order and decretal order dated 13.02.2024 made in I.A.No.4 of 2023 in G.O.P.No.546 of 2022 on the file of the Family Court, Salem and allow this Civil Revision Petition.

For Petitioner : Mr.Elanchezhiyan
for Mr.D.Gopinathan

ORDER

This civil revision petition arises against the order passed by the learned Judge, Family Court at Salem, in I.A.No.4 of 2023 in G.O.P.No.546 of 2022, dated 13.02.2024.



2.The civil revision petitioner is the respondent in G.O.P.No.546 of 2022. The short facts leading to this revision are:

(i)A child named ABC was born to the respondents herein on 15.10.2011. The civil revision petitioner is the sister-in-law of the 2nd respondent and the sister of the 1st respondent. She assured that she will take care of the child so born to the respondents and got a deed executed between the petitioner and the respondents. The validity of the deed was questioned on the ground that it was obtained on inducement and “coercion”.

3.The civil revision petitioner was married to one S.M.Ramesh, who unfortunately succumbed to cancer on 19.06.2019. Alleging that the civil revision petitioner thereafter prevented the natural parents from interacting with the child, the respondents lodged a complaint before the Commissioner of Police at Salem. The Commissioner of Police, Salem, conducted an inquiry through the Inspector of Police, All Women Police Station, Ammapettai, Salem. The Police directed the child to be kept with the Child Welfare Committee at Salem. Hence, an Habeas Corpus Petition came to be filed before this Court in H.C.P.No.1868 of 2021.



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4. Simultaneously, another Habeas Corpus Petition was filed in H.C.P.No.1892 of 2021. H.C.P.No.1868 of 2021 had been filed by the 2nd respondent and H.C.P.No.1892 of 2021 was filed by the civil revision petitioner. Since both the petitions are related to the child ABC, they were clubbed together and disposed of by a common order of the Division Bench of this Court dated 21.12.2021.

5. The Division Bench held that the Police and the Child Welfare Committee do not have the jurisdiction to deal with guardianship or custody of the child and the appropriate procedure is for any party, claiming guardianship, is to approach the jurisdictional Court invoking the provisions of the Guardianship and Wards Act, 1890. The Division Bench also directed the child to be handed over to the civil revision petitioner.

6. The order passed by this Court on 21.12.2021 was challenged before the Supreme Court in S.L.P.Civil.No.12247 to 12250 of 2022. The Special Leave Petitions were dismissed.



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7. On account of the liberty that had been granted by this Court, the respondents herein filed G.O.P.No.546 of 2022 on the file of the Family Court at Salem. It is their plea that no adoption had been taken place between the petitioner and the respondents.

8. On being served with the summons, the civil revision petitioner took out an application for rejection of the said petition. This application was numbered as I.A.No.4 of 2022. The ground on which the petition was said to be rejected were as follows:

- (a) The proceeding is barred by limitation;
- (b) The Family Court has no jurisdiction and
- (c) Under Section 19(b) of the Guardianship and Wards Act, 1890, the civil revision petitioner, has not been found to be unfit to have the custody of the child.

9. The learned Trial Judge received a counter from the respondents and proceeded to dismiss the petition. Hence, this revision.

10. I heard Mr. Elanchezhian for the civil revision petitioner.



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11.Mr.Elanchezhian invites my attention on Article 57 of the Limitation Act to plead that there is a bar for seeking a declaration that the alleged adoption is invalid or never took place. He argues a petition for declaration that the adoption is invalid, or never took place should be sought for, within a period of three years from the date of the alleged adoption comes to be known to the plaintiff. The second plea is that the proceeding is barred by virtue of Section 19(b) of the Guardianship and Wards Act, 1890. Finally, he points out that the minor child had deposed before the Mediator as well as before the learned Trial Judge that she is not interested to be with the respondents and wants to stay only with the civil revision petitioner. Therefore, he urges there is no possibility of success for the G.O.P.No.546 of 2022 and hence, seeks for the impugned order to be set aside and G.O.P.No.546 of 2022 to be rejected.

12.I have carefully considered the submissions of Mr.Elanchezhian.

13.At the outset, I have to point out that I am dealing with an application for rejection of a guardian and wards petition. While dealing with such an application, neither I nor the Trial Judge is entitled to look into the



defense raised by the respondent in order to defeat the application. The fact that there is absolutely no possibility of success in the petition is also not a ground to reject the plaint. Therefore, the last plea of Mr.Elanchezhian that even if G.O.P.No.546 of 2022 comes for trial, it will be a wasteful exercise does not appeal to me that it is against the settled position of law.

14.Turning to the aspect of limitation, I have to point out that while the Court is entitled to strike the petition on the ground of limitation, it has to be borne out from the averments made in the petition itself. Limitation is a mixed question of law and fact. It is for the civil revision petitioner to put the respondents in the witness box and extract from them the date of knowledge of the adoption. In addition, what is barred under Article 57 is presentation of a plaint seeking for a declaration. Being a suit which stultify the right of a party to get his right declared through the Court, it requires strict interpretation. When it comes to a Guardian Petition, the Court should prioritize the best interest of the child. By the very nature of the order passed in Guardianship proceedings, it is only interlocutory.



15.The Court is empowered to change the guardianship, if it finds that the guardian who is having the custody of the minor, has incurred certain disqualifications and is not entitled to continue as a guardian. This applies even if originally, he / she was found fit for such an appointment. That being the position, I cannot hold that the petitioner is barred by limitation.

16.Turning to the plea of Section 19(b) of the Guardians and Wards Act, 1890, it is not a bar to the jurisdiction of the Civil Court. It only reminds the Court that a person cannot be appointed as a guardian for a minor, unless and until it comes to the conclusion that the said guardian is unfit to be a guardian of minor. Even if I were to concede the plea of Mr.Elanchezhian that the word “mother” and “father” referred to in Section 19(b) includes an adopted mother, the point still remains that the adoption would have to be proved to the satisfaction of the Court. The Court cannot, in an application for rejection of plaint, come to the conclusion that either the petitioner or the respondents are unfit. This is because there is no question of recording the evidence by the Court at that stage.

17.Mr.Elanchezhian, finally refers to the judgment of this Court in



Udhayabhanu Vs. Ranganayaki and another, (2009) 2 LW 631, to urge that the Family Court does not have jurisdiction to deal with matters of guardianship. A careful reading of the said judgment shows that the learned Single Judge was dealing with the issue where the petitioners therein, had sought for a regularization of the adoption that had been made by them on 05.07.1970. They had approached the Family Court. The learned Judge interpreting Section 7 of the Family Court Act and came to the conclusion that a Family Court is not competent to deal with adoption.

18.A perusal of G.O.P.No.546 of 2022 shows that the petitioner are not raising a plea that they have adopted the child. On the contrary, their plea is that the alleged adoption raised by the civil revision petitioner is void and consequently, they are entitled to guardianship of the child. In terms of Section 7(1)(g) of the Family Courts Act, 1984, a Family Court can decide the issues of guardianship, custody of access of any minor in any suit or proceeding. Furthermore, in terms of Section 8 of the Family Courts Act, 1984, no District Court in an area where a Family Court has been established, will have the jurisdiction to deal with issues covered under Section 7(1)(a) to 7(1)(g). Therefore, the District Court in Salem, obviously will not have



jurisdiction to deal with an application for guardianship.

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19. There is no dispute that the civil revision petitioner, the respondents and the child ABC are all residing in Salem. That being the situation, the Family Court in Salem, not only has the necessary jurisdiction under Section 7, but also the territorial jurisdiction to deal with the petition for guardianship.

20. In the light of the above discussion, I do not find any reason to interfere with the order passed by the Family Court, Salem, in I.A.No.4 of 2023 in G.O.P.No.546 of 2022 dated 13.02.2024. The Civil Revision Petition is dismissed.

21. I should take note of the fact that the parties have been litigating regarding the custody and guardianship of the child ABC from 2021 onwards. It has taken them across the country till the Supreme Court. Since, Mr.Elanchezhian submits that the pleadings are completed, the learned Family Court Judge at Salem is requested to expedite the proceedings in G.O.P.No.546 of 2022 and complete the proceedings on or before 30.06.2025. The learned Judge shall give priority to this case, as issues



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relating to a minor child are involved. Consequently, the connected
Miscellaneous Petition is closed. No costs.

22.11.2024

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

To

The Family Court,
Salem.

V.LAKSHMINARAYANAN, J.

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