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C.M.A(MD)No.355 of 2010

**BEFORE THE MADURAI BENCH OF MADRAS HIGH
COURT**

DATED :07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.355 of 2010

and

M.P(MD)No.1 of 2010

S.Subramanian

... Appellant/Petitioner

Vs.

G.P.Loganathan

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 470 of Guardian Wards Act, to set aside the order dated 30.11.2009 on the file of the I Additional District Judge, Madurai.

For Appellant : No appearance
For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant challenging the order dated 30.11.2009 passed by the I Additional District Judge, Madurai in G.W.O.P.No.14 of 2007.



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2.The appellant/petitioner is the brother of the respondent's wife(since deceased) and the maternal uncle of the minors. He has filed a petition in GWOP No.14 of 2007 before the trial Court to appoint him as a guardian of the minors G.L.Sabari, G.L.Dinesh Babu and G.L.Balaji, on the ground that the respondent has no sufficient income and is working as a Salesman in the Textile shop and he is likely to marry for the second time.

3.The respondent filed a counter opposing the said petition, on the ground that the petition is not *bona fide* and the appellant had filed the petition only with a view to take over the properties standing in the name of his wife and inherited by the minor children.

4.The trial Court, after considering the oral and documentary evidence, held that some properties were purchased in the name of the wife of the respondent herein and that the respondent's wife did not have any source of income and the respondent had purchased the properties out of his own income.



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The trial Court also found that the appellant had not made out any ground for disqualifying the respondent from claiming guardianship of the minor children and therefore, dismissed the petition. Aggrieved over the same, the present appeal is filed.

5.The point for consideration is:

Whether the appellant is entitled to be appointed as guardian of the minor children?

6.It is seen from the records that since the learned counsel for the appellant was elevated as a Judge of this Court, notice was sent to the appellant and in spite of receipt of notice, none has entered appearance. Further though notice was sent to the respondent, none has appeared. That apart, it is seen that as of 2005, the children were minors and hence, today both the children would have attained majority. The appeal has therefore practically become infructuous.



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7.Even otherwise on merits, considering the facts and circumstances of the case and the fact that the respondent is the natural guardian and that the appellant had not established that the respondent was incompetent, this Court is of the view that the trial Court was right in dismissing the petition for guardianship filed by the appellant. The point is answered accordingly. Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

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NCC:Yes/No

Index:Yes / No

Internet:Yes / No

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To

1.The I Additional District Judge,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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