



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**C.M.A(MD)No.17 of 2019
and
C.M.P(MD)No.7405 of 2023**

J.Sakthi Devi @ Christi

... Appellant/Respondent

.Vs.

Joseph Charles

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act, praying this Court to set aside the fair and decretal order made in G.W.O.P.No.36 of 2015, dated 19.11.2018, on the file of Family Court, Madurai.

For Appellant : Mr.S.Venkatesh

For Respondent : Mr.G.Prabhu Rajadurai



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JUDGMENT

(Order of the Court was made by **P.VELMURUGAN,J**)

The Civil Miscellaneous Appeal is directed against the fair and decretal order made in G.W.O.P.No.36 of 2015, dated 19.11.2018, on the file of Family Court, Madurai.

2.The respondent/husband filed G.W.OP.No.36 of 2015 under Sections 25 and 43 of the Guardian and Wards Act, 1980, for custody of their minor children Gabriel Marianova and Issac, on the file of Family Court, Madurai. The Judge, Family Court, Madurai, after enquiry, allowed the Petition and granted an order of interim custody of the children to the appellant. Challenging the said order, the respondent therein filed the present Civil Miscellaneous Appeal.

3.The appellant is the mother of the children by name, Gabriel Marianova and Issac and the respondent herein is the father of the children. According to the respondent, their marriage was solemnized on 23.08.2009 at Fathima Church according to Christian rites and customs and thereafter, there was misunderstanding arose between them and hence, the appellant left the



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matrimonial home and and they are not allowing him to see the children and the children are with the appellant and therefore, they filed petition under Sections 25 and 43 of the Guardian and Wards Act.

4.The case of the appellant is that the marriage is admitted. The relationship is admitted and on the ill-advise of their parents, brother and sister, the respondent caused cruelty both mentally and physically. The respondent also demanded dowry and driven her out from the matrimonial home. Even on the advise of the well wishers, the respondent did not take her back to the matrimonial home. He also caused mental as well as physical cruelties and not taking care of the children. If the children are handed over to the respondent, there is life threat to the children and therefore, the learned Judge, Family Court, Madurai failed to consider the same and granted interim custody to the respondent. Therefore the present appeal came to be filed.

5.The learned counsel for the appellant would further submit that after marriage, the appellant was with the respondent in the matrimonial home. Their parents and in-laws harassed her and they also demanded dowry. Even during the



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pregnancy period, they compelled her to do all the household works and even they did not provide her with proper food at the time of pregnancy and since the sister-in-law of the appellant was in the family way and therefore the respondent and their parents forcibly sent the appellant to the parental home stating that it is not advisable to reside two pregnant women to have in the same house. Thereafter, she gave birth to the child. They did not take her back and subsequently on the advise of the well wishers came back to the matrimonial home and after that she became pregnant for the second baby. At that time, they did not take care of the appellant and she was physically and mentally harassed by the respondent and she was driven back to the parental home and they also demanded dowry and caused cruelty and therefore the appellant preferred police complaint, as the harassment of the family members of the respondent is on extreme end and thereafter, she was forced to go to her parental home and the respondent did not take any care of the appellant or their children. The respondent is a mentally ill person. If the respondent is allowed to have the custody of the children, there is no guarantee for the life of the children.

6.The learned Single Judge failed to consider the facts and simply allowed



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the custody considering the fact that the respondent is the biological father.

Except the qualification of biological father of the children, he has no other quality and therefore, the appeal has to be allowed.

7.The learned counsel for the respondent would submit that even after the order passed by the Court, the appellant did not hand over the children and the children are still with the appellant and only due to the harassment of the appellant, he was mentally disturbed and also took treatment and subsequently he has become all-right. The appellant has on her own voluntarily left the matrimonial home due to the ill advise of her parents and brothers and the respondent never caused any cruelty and also even the appellant is not taking care of the children and she has no means to maintain the children. They stated one thing in the maintenance petition filed under Section 125 of Cr.P.C and other things in the counter statement and she has not proved the averments made in the counter statement and the allegations in the counter statement have to be substantiated by the appellant. Considering the above facts, the Family Court, Madurai ordered for interim custody of the children to the appellant. The appellant taking advantage of the pending appeal, they are not allowing the



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respondent to see the minor children and even on the ill advise of the appellant and their parents, they have not even see the appellant. Therefore the appeal is liable to be dismissed.

8.Heard the submissions made on either side and perused the materials placed before this Court.

9.Admittedly, the marriage of the Petitioner and respondent was solemnized according to Christian rites and customs. Through their wedlock, they begotten two male children by name Gabriel Marianova and Issac. Admittedly, now the children are with the appellant. Though the appellant has levelled certain allegations against the respondent, who is the father of the children, a reading of the entire materials except the fact that the respondent has not examined any independent witness. Though they claim that the respondent husband was mentally ill person and that the appellant has also given so many complaints and cases against the respondent and the same are pending, the appellant has not produced any materials to substantiate her allegations and no document was produced. However, on the other hand, the respondent has



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examined himself as P.W.1 and one Arokiasamy as P.W.2.

10.The only question that arose for consideration in this appeal is as to whether the custody order with condition granted by the Family Court, Madurai is liable to be set aside?

11.The relationship of the parties are admitted. Admittedly, the respondent is the father of the children and admittedly, the children are with the appellant. The appellant /wife is living separately and she is not with the respondent. They also stated that the respondent is a mentally retarded person and no materials whatsoever was produced to prove the same. The respondent himself has stated that due to mental torture given by the appellant, he was suffering with some mental depression. For the same, he took treatment But the entire materials show that the father is not disqualified for having the custody of the children. As far as the custody is concerned, interest of the children is of paramount consideration. Admittedly, the appellant is the mother and the respondent is the father of the children. The respondent has filed petition for custody of his children. The appellant has not proved that the respondent is acting against the



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interest of the children. Except certain allegations as already stated, the appellant has not proved the same in the manner known to law, by examining any independent oral evidence or by production of documentary evidence. Since the petition for custody is summary in nature, the Court has to see the interest of the children as a paramount consideration. The respondent is the biological father, who is the natural guardian. Unless some reason is given that the biological father is acting against the interest of the children, he cannot be disqualified and otherwise also, the appellant has not proved any disqualification with the respondent for having the custody of the children. Admittedly, the appellant also admitted that the respondent is an earning member, earning a sum of Rs.1 lakh per month and also having other properties. Therefore, the financial capacity of the respondent is also not in dispute. Since there is no material to show that the respondent is a mentally retarded person and he is acting against the interest of the children, the respondent is entitled for the interim custody to see the minor children. The Judge, Family Court, Madurai after considering all the facts, ordered for interim custody and interim custody was given to the respondent only for the limited period. Therefore under these circumstances, on a perusal of the entire materials produced before this Court, this Court finds no merit in the



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appeal. Even after the Family Court passed an order and even advised the appellant, the appellant has adamantly not permitted the respondent to see the minor children and not stopped with that, on ill-advice of her parents, brothers and sisters, the appellant has not allowed the respondent to see the children, despite getting orders from the Court. Further the appellant also not interested in prosecuting the appeal taking advantage of the interim order. Therefore, under these circumstances, this Court finds no merit in the appeal and the appeal is liable to be dismissed. Considering the attitude of the appellant, the appeal deserves to be dismissed with costs.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed with costs. Consequently, connected Miscellaneous Petition is closed.

(P.V.,J.) (K.K.R.K.,J.)
24.10.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn



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To

The Judge,
Family Court,
Madurai.

Copy to

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN,J.

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