



C.M.A.(MD)No.1044 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **05.01.2024**

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1044 of 2014

S.Sankara Narayanan

...Appellant

Vs.

T.Kamatchi Suganya

...Respondent

PRAYER: This Civil Miscellaneous Appeal filed under Section 47 of the Guardians and Wards Act, 1890, to set aside the fair and decreetal order dated 20.03.2014 made in Guardian and Wards Original Petition No.53 of 2012 on the file of the II Additional District Judge, Tiruchirappalli.

For Appellant : Ms.J.Maria Roseline

For Respondent : Mr.V.Nagarajan

for Mr.G.Vidhya Maheswaran



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JUDGMENT

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This Civil Miscellaneous Appeal has been preferred against the fair and decreetal order dated 20.03.2014 made in Guardian and Wards Original Petition No.53 of 2012 on the file of the II Additional District Judge, Tiruchirappalli, wherein the appellant herein filed the Guardian and Wards Original Petition No.53 of 2012 on the file of the II Additional District Judge, Tiruchirappalli, for custody of the minor child to the appellant / petitioner.

2. The brief facts of the petition before the trial Court are as follows:-

(i) The marriage between the appellant / petitioner husband and the respondent / respondent wife was solemnized on 21.06.2004 at Papaneri village at Sivagangai Taluk. Due to the wedlock, a minor child, namely, Yokesh Ram was born on 16.11.2006. Without any valid reasons, the respondent / respondent wife left from the matrimonial home and resided with her parents along with her minor child. The respondent / respondent wife has not shown any interest in the welfare of the child. The appellant / petitioner husband alone attended the needs of the minor child.



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(ii) While that being so, on 03.01.2011, the respondent / respondent wife suddenly disappeared from the matrimonial home and did not return and could not be traced out. On 04.01.2011, a police complaint was lodged by the appellant / petitioner husband. Thereafter, it was known that the respondent / respondent wife was staying in Ashram at Tanjore and thereafter, the parents of the respondent / respondent wife took her to their house. Thereafter, the respondent / respondent wife filed a petition in HMOP No.45 of 2012 before the Principal Subordinate Court, Tiruchirappalli for restitution of conjugal rights under Section 9 of the Hindu Marriage Act and sought for interim custody of the child. Thereafter, the petition in HMOP No.45 of 2012 was withdrawn on 29.02.2012. The respondent / respondent wife and her parents are not sending the child to the school. On 13.04.2012, a lawyer notice was also sent to the respondent / respondent wife. Hence, the appellant / petitioner husband filed a petition to return the minor child to his custody.

3. The respondent / respondent husband filed a counter stating that the relationship between the parties has been admitted. The appellant / petitioner husband for the reasons known to him, prevented the love and



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affection towards the child. The appellant / petitioner husband caused harassment to the respondent / respondent wife. After dismissal of HMOP and after reunion, the appellant / petitioner husband has not shown any interest and caused mental torture to the respondent / respondent wife. The minor child is under the care and custody of the respondent / respondent wife and he needs proper care and protection, which is being provided by the respondent / respondent wife. The respondent / respondent wife being the mother is the only person apt to show love and affection towards the minor child. Now, the minor child is given education in Trichy Mount Litera Zee School and he has been properly maintained by the respondent / respondent wife with love and affection.

4. Before the trial Court, the appellant / petitioner husband himself examined as PW1 and marked Exs.P1 to P11. On the side of the respondent / respondent wife, she herself examined as RW1 and marked Ex.R1.

5. After evaluating the oral and documentary evidence adduced on either side, the trial Court has dismissed the petition, however, granted



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visitation rights for two occasions in a week. Aggrieved by the said order of the trial Court, the appellant / petitioner husband, who is the father of the minor child preferred this civil miscellaneous appeal on various grounds. The main ground is that the respondent / respondent wife is suffering from psychiatric problems and she is not providing healthy environment, good parental care and guidance and only the appellant / petitioner husband could provide good education to the minor child.

6. The learned counsel appearing for the appellant / petitioner husband would contend that the minor child has been under the custody of the respondent / respondent wife and the respondent / respondent wife is not a fit person to take care of the minor child and she is suffering from some illness and also the minor child was not admitted in a good school. Only the appellant / petitioner husband could provide good education to the minor child. But the respondent / respondent wife was not a fit person to bring up the minor child in a good environment. These aspects have not been considered by the trial Court and the trial Court erroneously dismissed the petition. Hence, the appellant / petitioner husband filed this appeal to set aside the order of the trial Court.



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7. The learned counsel appearing for the respondent would contend that the respondent / respondent wife being the mother is taking care of the minor child and the child is living happily with the mother and thereby, the trial Court after taking consideration of all these aspects, rightly dismissed the petition and hence, this appeal is liable to be dismissed.

8. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

9. After hearing both sides and upon perusing the documents including the order of the Tribunal by this Court, the point for determination in this appeal is whether the appeal has to be allowed or not.

10. In this case, there is no dispute with regard to the relationship between the parties and the contention of the appellant / petitioner husband is that the appellant / petitioner husband being the father of the child could provide good education and the respondent / respondent wife is not a fit person to have the custody of the child. The main contention of



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the appellant / petitioner husband is that the respondent being the mother of the minor child is not in a position to admit the minor child in a good school and she is also having some illness and thereby she is unable to maintain the minor child. It is admitted that the minor child has been under the custody of the respondent / respondent mother for more than 13 years and now he is aged 17 years. According to the respondent / respondent wife, the minor child was admitted in Trichy Mount Litera Zee School and he is happily living with his mother. The minor child has been under the custody of his mother for the past 17 years and he is going to attain majority within ten months. It is admitted fact that the minor child has been under the custody of the respondent / respondent mother for more than 13 years and he is now aged 17 years.

11. Since the minor child has been under the custody of his mother for the past 17 years and he is going to attain majority within ten months and considering that there are no adverse materials to show that there is an inconvenience to the minor child under the custody with his mother and considering the welfare of the minor, it is appropriate to allow the minor child to be in the custody with his mother. The trial Court has already



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granted visitation rights and thereby, the order passed by the trial Court is in accordance with law and there is no infirmity found in the order of the trial Court and this Court has no warrant to interfere with the order of the trial Court.

12. In view of the aforesaid discussions, this Court is of the opinion that the this appeal has no merits and deserves to be dismissed. Accordingly, this civil miscellaneous appeal is dismissed. The order dated 20.03.2014 made in Guardian Wards Original Petition No.53 of 2012 passed by the II Additional District Judge, Tiruchirappalli. is confirmed. No costs.

05.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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TO:-

- 1.The II Additional District Judge, Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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Judgment made in
C.M.A.(MD)No.1044 of 2014

Dated:
05.01.2024