



C.M.A(MD)No.1156 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 01.02.2024

CORAM:

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

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Manohari

... Petitioner / Appellant

Vs.

1.Veeraian

2.Indirani

... Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act, 1890, to set aside the order, dated 30.06.2014 passed by the Principal Sub Court, Kumbakonam in G.O.P.No.105 of 2013 and to appoint the appellant as Guardian of the minor child Sagar, aged 6 and his properties and to direct the respondents to handover the custody of the minor child to the appellant.

For Appellant : Mr.P.Sesubalan Raja

For Respondents : Mr.G.Gomathi Sankar



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JUDGMENT

The present Civil Miscellaneous Appeal has been filed as against the order passed in G.O.P.No.105 of 2013, dated 30.06.2014 on the file of the Principal Sub Court, Kumbakonam, wherein, the appellant herein has filed a petition to appoint her as a guardian for the minor Sagar aged about 5 years. The Trial Court has dismissed the petition. As against the order passed by the Trial Court, the present Civil Miscellaneous Appeal has been filed by the petitioner.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The brief facts of the petition averments are as follows:

The petitioner is the second wife of one Thangavel, who is the father of the minor child. Originally, the said Thangavel got married with Punitha, who is the daughter of the respondents herein and the said Thangavel and Punitha have a child, namely, Sagar. While so, on 29.01.2010, the said Punitha, who is the mother of the minor Sagar died. Thereafter, in order to take care of the minor son, the petitioner married



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the father of the minor, namely, Thangavel. The husband of the petitioner was working in Central Reserve Police Force (CRPF), Thiruvananthapuram. The petitioner along with her husband and minor son were living together. While so, on 15.11.2012, the said Thangavel died due to heart attack and the petitioner and the minor Sagar alone are the legal heirs to the deceased Thangavel. After the demise of the said Thangavel, the respondents forcibly took the minor child from the custody of the petitioner. Hence, the petition is filed to appoint the petitioner as guardian for the minor Sagar to his person and property.

4. The brief averments of the counter filed by the respondents are as follows:

The marriage between the petitioner and the deceased Thangavel is not admitted. The minor Sagar was born to Thangavel and the daughter of the respondents, namely, Punitha. This petitioner already got married with one Sahadevan and thereafter, she was abandoned by her husband. Without any divorce from the competent Court, there cannot be a second marriage while his spouse is alive. Therefore, there was no marriage solemnized between the petitioner and the deceased Thangavel. The



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averments made in the petition that the respondents forcibly taken the minor from the custody of the petitioner is denied as false. The averments made in the petition that these respondents are not a fit person to have the custody of the minor are all false. The minor is under the custody of the respondents. The deceased Thangavel, who is the son-in-law of the respondents died leaving behind the minor as his legal heir and till date, the minor is under the custody of the respondents, who are the maternal grand-parents of the minor son. Therefore, this petition is liable to be dismissed.

5. In order to prove the case of the petitioner, the petitioner has examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.9 and on the side of the respondents, R.W.1 and R.W.2 were examined and marked Exhibits R.1 to R.10 and Exhibits X.1 to X.5 were also marked.

6. After hearing both sides and perusing the records, the Trial Court had dismissed the petition. As against the dismissal order, the present Civil Miscellaneous Appeal has been filed by the petitioner.



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7. The learned Counsel appearing for the appellant would contend that the appellant / petitioner is the second wife of the deceased Thangavel and the minor son was born to the said Thangavel through his first wife. After the demise of his wife, in order to take care of the minor child, the deceased Thangavel married this appellant / petitioner and after the demise of mother of the minor child, the appellant / petitioner has been taken care of the minor child and the minor child was under the custody of the appellant / petitioner. Thereafter, the father of the minor child died on 15.11.2012. After the demise of the said Thangavel, the respondents / respondents, who are the maternal grand-parents of the minor child forcibly taken the minor child and not even allow the appellant / petitioner to see the minor child. Thereby, the appellant / petitioner filed the petition before the Trial Court. Before the Trial Court, on the side of the petitioner, the petitioner had examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.9. But the Trial Court without considering the evidence adduced on the appellant / petitioner's side, erroneously dismissed the petition. Hence, the order passed by the Trial Court is liable to be set aside.



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8. The learned Counsel appearing for the respondents / respondents would contend that there was no marriage solemnized between the appellant / petitioner and the said Thangavel. In fact, the said Thangavel married the daughter of the respondents / respondents, namely, Punitha and due to the wedlock, the minor son born to them. In the meanwhile, the mother of the minor child died in the year 29.01.2010. Thereafter, the minor child was with the custody of his father Thangavel. The said Thangavel did not marry the appellant / petitioner as alleged by her. Unfortunately, the father of the minor child also died on 15.11.2012. Thereafter, the minor child is under the care and custody of the respondents. The respondents are the competent persons to have the custody of the minor child and they are the guardians for the minor child. In order to prove the case of the respondents, they have examined R.W.1 and R.W.2 and marked Exhibits R.1 to R.10 and also marked Exhibits X.1 to X.5. After analyzing the evidences adduced on both the sides, the Trial Court has correctly dismissed the petition filed by the appellant / petitioner. Since the minor child is under the custody of the respondents they being maternal grand-parents are able to take care of the minor child



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and they are not acting as against the interest of the minor. Thereby, the Trial Court has dismissed the application and allowed the minor is to be in the custody of the respondents. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) Whether the appeal is liable to be allowed or not?

10. In this case, according to the appellant / petitioner, she is the second wife of the father of the minor child and the father of the minor child married the appellant / petitioner to take care of the minor child and the minor child was under the custody of the appellant / petitioner. After the demise of the husband of the appellant / petitioner (i.e.,) after 15.11.2012, the respondents, namely maternal grand-parents forcibly taken the minor child from the custody of the appellant / petitioner.



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11. The contention of the respondents is that the appellant / petitioner is not the second wife of the deceased Thangavel and she was wife of one Sahadevan. The respondents are the maternal grand-parents of the minor child. After the demise of the Thangavel, the minor child has been under the custody of the maternal grand-parents and they are now taking care of the minor child and they will not act as against the interest of the minor. Therefore, they are the proper persons to take care of the minor child. The Trial Court after taking into consideration of all the evidences adduced by both the parties, correctly dismissed the application. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.

12. This Court has perused the entire materials in this case and observed that the appellant / petitioner is neither the parent nor the close relative of the minor child and it is also admitted that the respondents are the maternal grand-parents of the minor child. There is no any evidence to show that the minor child was under the custody of the appellant / petitioner.



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13. Per contra, the respondents' side evidence shows that the minor is under the custody of the respondents, who are all the maternal grandparents of the minor child. The minor child also very comfortable with the respondents and the respondents are only taking care of the minor child and now the minor child is aged about 16 years. From the childhood (i.e.,) four years still he is under the custody of the respondents and thereby, it is appropriate to continue the custody of the minor with the respondents.

14. It is well settled law that as far as the custody of minor child is concerned, the welfare of the minor is the paramount consideration and since the minor is under the care and custody of the respondents for more than 16 years, it is appropriate not to disturb the custody of the minor child. At the same time, the appellant / petitioner is at liberty to visit the minor child subject to the willingness of the minor child.

15. In view of the above said discussions and considering the facts and circumstances of this case, this Court is of the opinion that this Civil Miscellaneous Appeal has no merits and deserves to be dismissed.



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Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Principal Sub Court,
Kumbakonam.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

BTR

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