



C.M.A(MD)No.951 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.01.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A(MD)No.951 of 2014

1. Rajammal (Died)
2. R.Krishnakumar
3. R.Sathesh

(Appellants 2 and 3 are brought on record as legal heirs
of the deceased sole appellant vide order dated 04.07.2022
made in C.M.P(MD)No.7758 of 2021)

... Appellants

Vs.

1.P.Sivakumar @ Sivaramakrishnan

2.The Headmaster,
Government Boys High School,
Sentharaipatti,
Ganga Valli Taluk,
Salem District.

... Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act, to set aside the fair and decreetal order dated 28.02.2014 made in G.W.O.P.No.82 of 2011 on the file of the II Additional District Judge, Tiruchirapalli.

For Appellants : Mr.G.S.Ashok Adityan,
for Mr.C.Susi Kumar

For R-1 : Ms.J.Anandhavalli

* * *



C.M.A(MD)No.951 of 2014

JUDGMENT

WEB COPY

The present Civil Miscellaneous Appeal has been filed as against the order passed in G.W.O.P.Nos.82 and 87 of 2011 dated 28.02.2014 on the file of the II Additional District Judge, Tiruchirapalli, wherein the appellant herein filed a petition to have the custody of the minor child as against the respondents herein and the same was dismissed by a common order by the Tribunal, dated 28.02.2014. As against the common order, the present Civil Miscellaneous Appeal has been preferred by the appellant / petitioner. The appellant is the maternal grand-mother of the minor child and the first respondent is the father of the minor child.

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 first respondent is the son-in-law of the petitioner and the marriage between the daughter of the petitioner and the first respondent was solemnized on 03.04.2006 and thereafter, minor Kanisha was born on 16.02.2007. Due to the matrimonial dispute, the daughter of the petitioner



C.M.A(MD)No.951 of 2014

was residing with her parents for the past five years. Even after the birth of the child, the first respondent father did not turn up to take care of the minor child. Thereafter, the daughter of the petitioner died and the father of the minor child / first respondent did not take care of the child and the petitioner is a fit person to take care of the minor child. The first respondent, father of the minor child has not given any financial assistance to the minor child and he is an un-employed and he has no income. Now the minor child is studying in Vimala Matriculation School at Thuraiyur and the petitioner is interested to provide higher studies and also she undertakes that she will not act against the interest of the minor child. Therefore, the petitioner has to be declared as guardian for the minor child and the custody of the minor child has to be given to the petitioner.

4. The brief facts of the counter averments are as follows:

The petition is false, frivolous and not maintainable either in law or on facts. The averments made in the petition in respect of ill treatment by the first respondent are all false. After the marriage, the first respondent came to knowledge that his wife already heavily suffered with skin disease that also un-curable one and as well as some defects in her kidney also.



C.M.A(MD)No.951 of 2014

WEB COPY

But at the time of marriage, the petitioner's family suppressed that the facts even now she is taking treatment for the disease. Thereafter, the wife of the respondent admitted in the private hospital at Trichy and then, the respondent along with her family members rushed to Trichy on 29.03.2011 and thereafter, came to know that the deceased died in the hospital on 30.03.2011. After the demise of his wife, the respondent as a natural guardian and as a father of the minor child, requested the petitioner to hand over the children for his custody but the petitioner not at all allowed the respondent to contact with the children and avoid the presence also. Finally, the petitioner lodged a complaint before the police station on 08.06.2011, but she refused to hand over the custody to the respondent. The respondent and his mother, two sisters living jointly. All are eager to take custody of the children from the petitioner. But the petitioner purposely fail to hand over the children to the respondent. The petitioner is a age old person and they cannot properly maintain the children. The respondent being the natural guardian is entitled to have the custody of the minor child. Therefore, the petition is liable to the dismissed.



C.M.A(MD)No.951 of 2014

WEB COPY

5. The learned counsel appearing for the appellants would contend that originally the appeal was filed by the 1st appellant and she died during the pendency of the appeal. The maternal uncles of the minor child were brought on record by this Court to re-present the present appeal. In fact, the first respondent, father of the minor child is not entitled to take care of the minor child. From the age of 4 years, the minor child is under the custody of the appellants and now she is aged 17 years. The minor child was also examined by the trial Court. At that time, she was aged 4 years. Therefore, she was not in a position to understand the proceedings. Now she is aged 17 years and she is studying 12th standard. Now she is under the custody of the appellants. Therefore, the order passed by the trial Court is liable to be set aside and the custody has to be continued with the appellants.

6. The learned counsel appearing for the respondents would contend that the trial Court after taking into consideration of the evidences and also considering the welfare of the minor child, directed the appellant to entrust the custody with the first respondent. But still the minor child is under the custody of the appellants and they are not even permitting the first



C.M.A(MD)No.951 of 2014

respondent to visit the minor child. The first respondent has taken steps to see the minor child. However, he is not able to get orders in his favour. Now the minor child is aged 17 years. The first respondent is ready to take care of the minor child. Therefore, he prayed for dismissal of this appeal.

7. This Court heard both sides and went through the materials on record.

8. The point for determination in this appeal is whether the appeal is to be allowed or not.

9. In this case, it is admitted by both parties that now the minor child is under the custody of the appellants. At the time of filing the petition, the minor child has been under the custody of the 1st appellant and the trial Court also directed the 1st appellant to hand over the custody of the minor child to the first respondent. Now the minor child is aged 17 years and she is capable to decide under who's custody she want. At this stage, the learned counsel appearing for the appellants submitted that as per Section 17(3) of the Guardians and Wards Act, 1890 the willingness of



C.M.A(MD)No.951 of 2014

the minor has to be obtained before taking decision. The minor was aged 4 years at the time of examination before the trial Court, and she has been under the custody of the appellants for more than 15 years.

10. This Court considered that for more than 15 years, she has been under the custody of the appellants and thereby considering the welfare of the minor child, this Court is not inclined to disturb the custody of the minor child. Since the minor child is under the custody of the appellants for more than 15 years and she is going to attain majority within a short span of time, this Court do not want to disturb the custody of the minor child. Without going into the merits of the case, considering the age of the minor child and also considering the fact that she is going to attain majority within a short span of time, this Court is declined to allow this appeal. The first respondent is at liberty to visit the minor child subject to the willingness of the minor child. With the above said observation and with the liberty to the first respondent, this Civil Miscellaneous Appeal is dismissed. No costs.

31.01.2024



C.M.A(MD)No.951 of 2014

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

To

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



WEB COPY



C.M.A(MD)No.951 of 2014

P. DHANABAL, J.

BTR/ PMU

C.M.A(MD)No.951 of 2014

31.01.2024