



C.M.A.(MD) No.463 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.463 of 2016

1.V.Susai David
S/o.Visuvasam Pillai

2.S.Arockia Kishore
S/o.Susai David

... Appellants

Vs.

S.Joseph Victor
S/o.S.A.Soosai Prakasam

... Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act, 1890 r/w. Order 43 Rule 1(a) of CPC to set aside the fair and decreetal order dated 18.02.2016 passed in G.W.O.P.No.35 of 2012 on the file of the II Additional District Court, Tiruchirapalli.

For Appellants : Mr.H.Arumugam

For Respondent : No appearance



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J U D G M E N T

The instant appeal challenges the order of the II Additional District Court, Tiruchirapalli, dismissing G.W.O.P.No.35 of 2012, which was filed by the appellants seeking guardianship or, in the alternative, visitation rights for the minor child.

2. The facts leading to the filing of this appeal are as follows:

- (a) The first appellant is the maternal grandfather, and the second appellant is the maternal uncle of the minor child. The respondent is the father of the minor child. The mother of the minor child died on 10.09.2009.
- (b) The appellant had suspicion over the death of the mother of the child and also initiated a criminal proceeding against the respondent.
- (c) The appellants filed a petition before the trial court stating that the respondent is incompetent to be the guardian as there is a criminal case against him; that the respondent is likely to marry for the second time; and that if the custody of the minor child is retained by the respondent, it would not be in the interest of the minor child.
- (d) The respondent filed a counter before the trial court stating that the criminal case filed against him is false; that the



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appellants, who are the lawyers, had forcefully taken the minor child from his custody; and that thereafter, with the intervention of the police, he got back the custody of the minor child.

- (e) The trial court, after considering the evidence on record, held that the appellants are not entitled to the prayer sought for in the petition. However, the trial court held that the appellants would be entitled to the alternative prayer for visitation rights and directed the respondent to hand over the custody of the minor child to the appellants once a week, on Sundays, at a common place, namely a church.

3. The learned counsel for the appellants submitted that the minor child was born on 26.12.2006 and would attain majority on 26.12.2024 and that the issue in the instant appeal has almost become infructuous. However, the learned counsel submitted that the respondent has violated the order of the trial court in respect of the second prayer, namely, visitation rights granted in favour of the appellant. The learned counsel submitted that the trial court had also made some unwarranted observations as regards the motive of the appellants in filing the petition for guardianship.



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4. Though notice has been served on the respondent, none has entered appearance.

5. The only point for consideration in this appeal is whether the appellants are entitled to be appointed as the guardians of the minor child.

6. Admittedly, the minor child would attain majority in three months. This Court is of the view that, since the custody of the minor child has been with the respondent since he was 6 years old, it cannot be altered at this stage, especially when he is close to attaining majority. No useful purpose will be served in adjudicating this appeal filed by the appellants on merits. However, this Court finds merit in the submission of the learned counsel for the appellants that the observation of the trial court attributing motive to the appellants is unwarranted.

7. The conduct of the respondent is also not above board. Though notice has been served, he had chosen not to enter appearance. In fact, it is submitted by learned counsel for the appellants that though this Court had earlier directed the police to produce the minor child, the child has not been produced before this Court till date. In the interest of the minor



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child, this Court refrains from issuing any further directions in this regard.

The respondent had also violated the order of the trial court in respect of visitation rights. The respondent is therefore directed to comply with the directions of the trial court as regards visitation rights.

8. With the above observations, this Civil Miscellaneous Appeal is dismissed. No costs.

11.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

- 1.The II Additional District Judge,
Tiruchirapalli,
Tiruchirapalli District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court, Madurai.



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SUNDER MOHAN, J.

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