



Cros. Obj (MD) No.19 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD)No.1066 of 2018

Maharasi
Appellant

...

vs.

S.Velaiutham @ Suresh
Respondent

...

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of the Guardians and Wards Act, against the award dated 03.02.2018 in G.W.O.P.No.314 of 2012 on the file of the District Court, Kanyakumari.

For appellant : Mr.M.Sankar

For Respondent : Mr.M.P.Senthil

J U D G M E N T

The grandmother of the minor children aggrieved by the order of the Trial Court appointing the respondent as a guardian with a direction to



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hand over the custody of the minor child to the respondent, has preferred the instant appeal.

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

a. The respondent and the daughter of the appellant got married on 29.01.2007. A minor son by the name V. Sivathanu Pillai @ Vighnesh @ Vicky was born on 09.04.2008. The wife of the respondent, who is the daughter of the appellant, committed suicide on 26.02.2012. The minor child has been in custody of the appellant since then. The respondent filed G.W.O.P.No.314 of 2012 before the District Court, Kanyakumari District, under Section 7 1(a) of the Guardian and Wards Act III of 1980, to appoint him as a guardian and for resumption of the custody of the minor child.

b. The appellant filed a counter stating that the respondent was not competent to be appointed as a guardian; that it would not be in the interest of the minor child to hand over his custody to the respondent; and that the daughter of the appellant committed suicide because of the cruelty committed by the respondent.



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c. Before the Trial Court, the respondent examined himself as P.W.

1 and marked Exs.P1 to P4. The appellant examined herself as R.W.1 and marked Exs.R1 to R3.

d. The Trial Court, after considering the evidence on record, held that the respondent would be a fit person to be appointed as a guardian and consequently, directed the appellant to hand over the custody of the minor child to the respondent.

3. The learned counsel for the appellant would submit that admittedly, the minor child is in custody of the appellant from 26.02.2012, i.e., the date on which the appellant's daughter committed suicide. The child was 4 years old when the custody was handed over to the appellant and the appellant had also lodged a complaint against the respondent regarding the suspicious death of her daughter; that though the respondent had filed the petition seeking guardianship and the custody, he is not interested in the welfare of the minor child and had not provided any assistance for education or for other expenses; and that in any case, since the minor child is now 16 years and 6 months old, it would not be in the interest of the minor child to change the custody and hence, prayed for



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allowing the appeal.

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4. The learned counsel for the respondent, per contra, submitted that the respondent had filed G.W.O.P.No.314 of 2012 after the death of his wife, since he wanted to take care of the minor child; that he is always interested in the welfare of the minor child; and that the Court below had rightly allowed his petition and hence, prayed for dismissal of the appeal.

5. The only point for consideration in the appeal is '*whether the respondent can be appointed as a guardian of the minor child?*'

6. Admittedly, the respondent is the father of the child; the child was born on 09.04.2008; the wife of the respondent, who is also the daughter of the appellant, died on 26.02.2012; and the minor child is in the custody of the respondent ever since she died on 26.02.2012; when the minor child was handed over to the appellant, the minor child was, hardly, four years old.

7. No doubt, the respondent had filed the petition for appointing him as a guardian and for resumption of the custody in the year 2012



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itself. The child is now 16 years and 6 months old and has been taken care of by the appellant well so far. It is well settled that the interest and welfare of the minor child should be the paramount consideration while adjudicating the disputes with regard to the guardianship and custody. The child is still in the custody of the appellant and would attain majority within two years from now. He has been brought up all along by the appellant and it would not be in the best interest of the minor child if his custody is handed over to the respondent at this stage. In fact, this Court had asked the learned counsel for the respondent to get instructions from his client as to how he could support the minor child monetarily and if possible, make a deposit in the name of the minor to prove his *bonafide*.

8. The learned counsel for the respondent submitted, on instructions, that the respondent has no capacity to support the minor child monetarily.

9. Therefore, in view of the changed circumstances and considering the above facts, this Court is of the view that the custody of the minor child cannot be handed over to the respondent at this stage. For the above reasons, this Court finds that the order of the Trial Court is liable to be set



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aside and hence, the order of the Trial Court is set aside.

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10. However, the respondent would be entitled to visitation rights.

Hence, the respondent shall be permitted to visit the minor child once in a fortnight, i.e., on the first and third Sunday of every month between 10.00 a.m and 1.00 p.m at the residence of the appellant.

11. In the result, this Civil Miscellaneous Appeal is allowed, with above directions. No costs.

24.10.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The District Judge, Kanyakumari.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN,J

apd

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