



C.M.A.(MD).No.370 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 24.07.2024

DELIVERED ON : 21.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.370 of 2021

K.Palanikumar

... Appellant/Petitioner

Vs.

S.Subhathra

... Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 47 of the guardians and Wards Act, 1890, to set aside the fair and decreetal order dated 06.10.2018 passed in G.W.O.P.No.38 of 2016 on the file of the I Additional District Court, Madurai.

For Appellant : Mr.K.Raghul Priyan

For Respondent : No Appearance

JUDGMENT

This appeal has been directed against the fair and decreetal order dated 06.10.2018 passed in G.W.O.P.No.38 of 2016 on the file of the I Additional District Court, Madurai.



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2.The facts in brief:

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The appellant Palanikumar filed a petition against the respondent herein under Sections 7 & 10 of the Guardian and Wards Act, 1994, seeking the relief of appoint himself as guardian of the minor son Kesavalingam, directing the respondent to hand over the custody of the minor and for other reliefs.

3.That petition has been filed with the following averments: The petitioner is the father of and natural guardian of the minor Kesavalingam, who is aged about 3 years. The respondent is his wife. The marriage between the parties took place on 05.02.2017 at Tharumai Aadinam Shree Chockanathar Kalyana Mandapam, Madurai, in the presence of the relatives and elders as per the Hindu Customary Rites. After their marriage they started their matrimonial life and due to the wedlock the minor Kesavalingam was born on 14.04.2013.

4.After the birth of their son, there was frequent quarrel made by the respondent. He was treated cruelly by the respondent. Slowly her attitude also started changing. She never acted as a dutyful wife. Because



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of the issue between the parties, the respondent pressured the petitioner to give consent for mutual divorce. The efforts made by the family members and elders to resolve the issue failed. A deed of dissolution of marriage was executed on 28.09.2015. Before the deed of dissolution of marriage the petitioner was permitted to visit the child, but, the respondent later failed to comply the undertaking. On 28.09.2015 the petitioner went to respondent's house. But, he was not permitted to see the child. The respondents are not taking appropriate care to the health of the child and slowly the health condition is deteriorated. Since the health of the minor child is paramount consideration and being the natural guardian he is entitled for custody of the minor child. For that purpose this petition was filed.

5.Counter was filed disputing the allegations stating that the marriage is admitted. But other allegations are denied as false. The respondent is having sufficient source of income to maintain and educate the minor. The petitioner does not have any proper monthly income or any other source. Now the child is aged about only 4 years. If the custody is given to the petitioner the welfare of the child will be affected and



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prayed for dismissal of the petition.

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6.After full enquiry, the custody of the child was permitted under the respondent. But however, the petitioner was given visiting right once in a month of every second Saturday from 10.00 a.m. to 12.00 noon. Against which this appeal has been preferred by the appellant / husband.

7.Heard the learned counsel for the petitioner.

8.Pending the appeal process, the matter was referred to the Mediation and in the Mediation process, it appears that there is no settlement reached between the parties. So the matter was heard on merits.

9.The learned counsel for the petitioner reiterated the grounds made in the trial court. But, in spite of repeated adjournment there was no appearance for the respondent. Finally she did not turn up. So her name was ordered to be printed in the cause list. On 24.07.2024, orders was reserved.

10.It is a matrimonial issue between the husband and wife. For



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what reason they want to separate is beyond the scope of this petition or appeal. An unregistered deed of mutual divorce was entered between the parties, which also not legal and valid under law. We need not concentrate much upon the above said position. Not it is admitted by both sides that they have separated from each other, leave alone the legal consequences.

11. But the petitioner wants to rely upon the document to show that as per the agreement between the parties, the appellant was given visiting right to the child. But against that agreement, the appellant was prevented by the respondent and their family members from seeing the child. On that ground he wants the complete custody of the child.

12. No doubt the appellant being the father of the minor child is a natural guardian. But so far custody is concerned, the welfare of the child is paramount consideration. He was aged about 5 years at the time of the petition. Now he would have been around 12 or 13 years old. By that time, the child would have been matured to some extent. Now whatever it may be, unless a special ground is made out by the petitioner for the



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complete custody of the child, he is entitled for only visiting right as per their agreement.

13.In the petition, no specific or proper ground is mentioned. Simply it has been stated that the respondent is not taking proper care on the health of the child. Because of her carelessness the health condition is deteriorated. To show the same absolutely there is no evidence on trial Court that the health condition of the minor is in poor state. So it is seen that it has been stated only for the purpose of making out the cause of action for filing the petition. It is in evidence to show that the child was born on 14.04.2013. She went to her parental home and thereafter did not return to the matrimonial home. As usual, allegations and counter allegations made against each other, with regard to the failure of the compromise talk for reunion. So it is seen that right from the birth of the minor child both are living separately and ever since the child is in the custody of the respondent. It is also in evidence to show that both went for tonsuring ceremony of the child after completion of one year. In spite of the above said fact there was no intention on the part of the parties for reunion.



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14.The minor child as well as the respondent present before the Court one one point of time. The trial court recorded a finding that the child was comfortable under the custody of the respondent. It is also seen that remarriage was performed by the respondent and she became pregnant when she appeared before the trial court. Whether performance of the second marriage by the respondent is a legal ground available to the petitioner, the trial Court recorded a finding that there is no such disqualification.

15.It is not the case of the petitioner that also because of the remarriage it is not safe or in the interest of the welfare of the child to be left in the custody of the respondent. But as mentioned above, right from the birth the child was under the care and custody of the respondent. So handing over of the child to the appellant's custody will harm the mental and health condition of the minor. On that ground the trial court has rejected the plea of permanent custody. But has granted visitation right. So the petitioner must be satisfied with the above said visitation right. After the majority, the child can choose his own further course of action. Till then, the child shall be in the custody of the respondent herein. I find



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absolutely, no reason to interfere with the above said order of the trial Court. Appeal is liable to be dismissed.

16. Accordingly, this civil miscellaneous appeal stands dismissed.

No costs.

21.10.2024

Index : Yes / No
Internet : Yes / No
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To

1. The I Additional District Judge, Madurai.

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



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