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CMA No. 891 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 891 of 2024

1. G.Manoharan

2. Shanthi

Appellants

Vs

M.Sara

Respondent

PRAYER :- Civil Miscellaneous Appeal filed under Sec.47 of Guardian and Wards Act, 1890, praying to set aside the fair and decreetal order passed in GOP No. 213 of 2021 on the file of Principal District Judge, Salem Dated 22.04.2022 and allow the CMA

For Appellants: Ms.J.Prithivi

For Respondent: Mr. N. Stalin



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JUDGMENT

Challenging the impugned order passed in G.O.P.No. 213 of 2021 by the Principal District Judge, Salem, the appellants/petitioners have preferred this Civil Miscellaneous Appeal.

2. Before the trial court, the appellants have filed a petition in G.O.P. No.213 of 2021 on the file of Principal District Court, Salem praying for custody of minor grandson. As on date, minor grandson was under the custody of respondent, who is mother of said minor Pravesh. On hearing both sides, the trial court dismissed the petition holding that the prayer sought in the said petition by quoting wrong provision, besides, considering welfare of child, the petition was dismissed and the custody was not given. Challenging the said findings, now they have preferred this appeal.

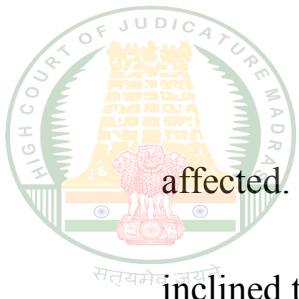
3. On perusal of records, the fact reveals that the petitioners' son Dhamodharan has married the respondent and both were belong to different religion and their marriage is a love marriage, which was performed on



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23.01.2014. They have begotten a child viz., Pravesh and thereafter the petitioners' son met with an accident and died on 17.10.2016. Subsequently, wife and son are under the care of maternal parents, however, both were residing nearby in the same place. The petitioners being paternal grandparents of minor child wanted to have custody of minor child, since they have lost their only son in a road accident. So, they have approached the court for interim custody and they are the pensioners. The respondent, who has converted to Muslim religion and she is following Islamic rights. But, she has not permitted them to see the child. Therefore, they have approached the court by filing a petition under Sec.12 of Guardian and Wards Act. The trial judge has held that they have filed the petition by quoting wrong provision under Sec.25 of Guardian and Wards Act as such is not maintainable. Mere mentioning of wrong provision is only an error on technicality and it should not deprive the lawful rights of petitioners. Now, the said findings are challenged by the appellants.

4. The learned counsel for respondent submitted that at one occasion, when they arranged to see the child, they have introduced a person, who accompanied with them is the father of minor son. So, minor son was mentally



affected. Therefore, on seeing conduct of the petitioners, the respondent is not inclined to give visitation right to them, besides minor son is also not inclined to see the petitioners.

5. Considering both side submissions, the fact reveals that the petitioners have lost their son and begotten his minor grandson and he is living under the custody of respondent, but both were residing in the same place. Due to some misunderstanding, the respondent has not allowed the petitioners to see their grandson. As a paternal grandparents, they are entitled to see minor Pravesh, provided it should not lead annoyance to grandson. Therefore, the impugned order passed by the trial judge on technicality is set aside and though the petitioners have sought for physical custody of minor Pravesh, this Court is inclined to grant interim visitation right alone to the petitioners, since the 1st petitioner is aged about 69 years and 2nd petitioner is aged about 55 years. So, they are directed to see their grandson at the District Court Legal Services Premises, Salem on every first Saturday from 10.30 a.m. to 04.00 p.m. and second week of every Friday of English calendar month between 03.00 p.m. to 05.00 p.m. Grandparents alone are directed to see the child and the respondent



is also directed to cooperate with the said order. If any deviation, it will be viewed as per manner known to law. Accordingly, this Civil Miscellaneous

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Appeal is allowed. No costs.

30-07-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. Principal District Judge, Salem.
2. District Court Legal Services Authority, Salem.
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

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