



C.M.A(MD) Nos.411 and 412 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A(MD)Nos.411 and 412 of 2021

and

C.M.P(MD)Nos.3632 of 2021, 9630 of 2023, 299 & 302 of 2025
and 755 of 2025

C.M.A(MD)No.411 of 2021

Valanadu

... Appellant/Petitioner

-Vs-

1.Kannappan(Died)

2.K.Devi @ Sakunthala

...1st Respondent in GWOP

*(Cause Title accepted vide Court
Order dated 09.02.2021 in
C.M.P(MD)Nos.787 & 791/21)*

3.N.Rani

4.S.Rama

5.N.Radha

... Respondents 2 to 5/LRS of
the 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of Guardian and Wards Act, against the decree dated 12.09.2019 passed in G.W.O.P.No.07 of 2017 by the Judge, Family Court, Sivagangai.

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For Appellant : Mr.S.Ramesh
For R4 : M/s.K.Shwathini, for
Mr.G.Prabhu Rajadurai
For R1 :Died
For R2, R3 & R5 : No appearance

C.M.A(MD)No.412 of 2021

Valanadu

... Appellant/1st Respondent

-Vs-

1.S.Rama

...1st Respondent/Petitioner and
LR of 2nd respondent

*(Cause Title accepted vide Court
Order dated 09.02.2021 in
C.M.P(MD)Nos.787 & 791/21)*

2.Kannappan(Died)
3.K.Devi @ Sakunthala
4.N.Radha
5.N.Rani

... Respondents 3 to 5/LRS of
the 2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of Guardian and Wards Act r/w Section 19 of the Family Courts Act, against the decree dated 12.09.2019 passed in G.W.O.P.No.1 of 2018 by the Judge, Family Court, Sivagangai.

For Appellant : Mr.S.Ramesh
For R1 : M/s.K.Shwathini, for
Mr.G.Prabhu Rajadurai
For R2 :Died
For R3, R4 & R5 : No appearance



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COMMON JUDGMENT

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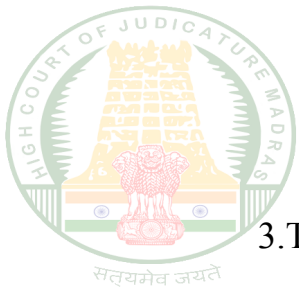
DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

The father of the minor child by name Mahisha is before this Court, being aggrieved by the dismissal of his petition seeking guardianship of the minor child in G.W.O.P.No.7 of 2017 and giving custodian and guardianship of the minor child to Rama, who is the sister of Radhika deceased wife of the appellant.

2.The short facts necessary to decide the issue is that the appellant viz., Valanadu and Radhika got married on 24.01.2011 at Madurai. The daughter was born to them on 22.10.2011 by named her as Mahisha. After the child birth, Radhika while sick and died on 05.05.2024. The property left by Radhika by inheritance became a point of contention between the parties and a civil suit in O.S.No.56 of 2007 is pending. The minor child is brought up by one Rama, sister of the deceased Radhika and the metarnel grandparent. There is another civil suit to declare the Will of Radhika as forgery and is also a criminal case in this connection initiated by the appellant. In the said circumstances, the appellant filed G.W.O.P.No.7 of 2017 and the said Rama filed G.W.O.P.No.1 of 2018.



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3.The dispute regarding the guardianship of the minor girl tried by the Family Court, Sivagangai, two separate orders were passed on the same day allowing the petition filed by Rama and dismissing the petition filed by the appellant/Vallanadu.

4.The present appeal, directed against the two orders, is on the ground that the Family Court had failed to take note of the fact that the custody of the minor child was forcibly taken by the family members of the deceased wife and by creating forged Will, the property left by late Radhika was intended to grab by them. The trial Court, without proper appreciation of the facts, had belived the case of the respondent that even before the child birth, the said Radhika got separated from the appellant and living with her parents and executed a Will making certain remarks about her husband.

5.The learned counsel appearing for the appellant would submit that the recite in the Will is forged one being giving undue importance to the trial Court and had led certain observations which are contrary to law and adverse to the appellant. Therefore, apart from challenging the order of the Family Court diversiting the custodian and guardianship of her own daughter, the adverse remark by way of observation made by the Family Court also need to be

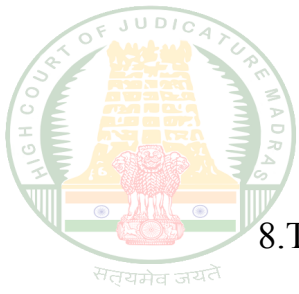


considered and exchewed.

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6.The learned counsel appearing for the first respondent would submit that the trial Court, after considering the evidence both oral and documents, had arrived at a right conclusion holding that the appellant in never shown any interest in maintaining the minor daughter. He had not contributed anything physically or financially for her upgrowing for the past 14 years. He had married a lady on 04.9.2017 and blessed with twin children leading his own way of life and interested only for grabbing the property of Radhika, the mother of the child under the guise of getting custody and guardianship of the child.

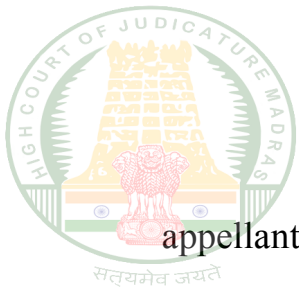
7.This Court, on considering the rival submissions by way of pleadings and documents as well as by way of oral documents, is of the opinion that the property dispute and the criminal complaint regarding forgery of the alleged Will of Radhika are matter to be decided by the respective Courts. As far as the G.W.O.Ps, are concerned, the Courts are expected to examine the best interest of the child and the custody and guardianship with the person who can take care of the child in a proper manner. It is a case of pathetic minor girl who is now 14 years old, lost her mother soon after her birth and was brought up by the family members of her mother, particularly Rama, sister of her deceased mother.



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8.This Court, after several adjournments of hearing, thought fit that before arriving at a conclusion, it is better to hear the interest of the minor child. Hence, she was called to be present before this Court on 04.04.2025. She, Rama, the respondent as well as the appellant Valanadu were all present. This Court on interaction with them individually and jointly. The minor girl presently completed her 8th Std., and the first step of 9th Std. She has given good education and other training in extracurricular activities by the respondent and she called her “அம்மா “. She will comfortable with her. There is no sign of having any approach with the appellant her father, who is living in the same street. In fact, the appellant is occupying a portion of the building which is under dispute.

9.The trial Court, while considering the best interest of the child had observed that the appellant being a tailor has no wherewithal to bring up the child before with the financial status of the respondent and her father. No doubt the custody cannot be decided based on the financial strength or weakness. It is the amount of love and affection shown to the child and the best interest of the child to have a bright future and comfort living to be taken into account. In this case, we are dealing with a teenage girl is world's vice with a good education. On interacting with her clearly reveals that disturbing the custody and guardianship at this juncture will be detrimental to the best interest of the child. Comparing the



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appellant father, who is now married and having two children living with his second wife happily and the respondent, who was almost dedicated her life for the welfare of the minor child Monisha, undoubtedly the respondent Rama will be the best person to be the custody and guardianship of the minor child. Therefore, this Court dismissed the both C.M.As. Regarding the property dispute and other disputes, it is for the parties to workout their remedy before the respective forum. This Court also while interacting with the minor child explore the possibility of granting visitation rights to the appellant. She has clearly expressed her disinclination to entertain any visitation. However, this Court is of the view that the attitude of the person may change and in this case also the attitude of the minor girl may change in future and therefore, if the appellant wants to have a visitation of his daughter, he can inform the custodian/guardian Rama in advance and exercise his rights of visitation once in a month preferably, any one of the Sundays for three hours. No costs. Consequently, connected miscellaneous petitions are closed.

[G.J., J.] & [R.P., J.]

08.04.2025

NCC : Yes / No
Index : Yes / No

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DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

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To

1.The Judge,
Family Court,
Sivagangai.

Copy to:

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

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