



WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 20.02.2025

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MS. JUSTICE R.POORNIMA**

**C.M.A(MD)No.254 of 2019
and
C.M.P(MD)No.3476 of 2019**

Dr.B.Clement Roger

...Appellant/Petitioner

.Vs.

Dr.S.Mary Sushmitha

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act praying this Court to set aside the fair and decretal order made in G.W.O.P.No.15 of 2016, dated 13.12.2018, on the file of the Principal District Judge, Theni.

For Appellant : Mr.V.Illanchezian

For Respondent : Mr.S.C.Herold Singh



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JUDGMENT

DR.G.JAYACHANDRAN., J
AND
R.POORNIMA.,J

The Civil Miscellaneous Appeal is directed against the order passed by the Principal District Judge, Theni dismissing the Petition seeking guardianship of the minor child born to the Petitioner and respondent.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The case of the appellant as averred in the Original Petition reveals that he married the respondent on 08.11.2010 as per Christian Rites and Customs. They were living at Theni. After marriage, they established their marital home at Chennai. A male child by name C.Joen Christopher was born to them on 22.8.2011. After the respondent got employment in Tamil Nadu Medical Service and posted in Theni Medical College, the spouses got separated. The respondent was living with her parents at Theni, whereas, the petitioner used to visit her during weed ends from Chennai. In the month of December 2012, the respondent



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got transferred to Chennai and both reunite and got their family established at Kelleys, Chennai. Due to personal friction between them, the respondent left her husband on 3.6.2013 and came back to Theni along with the minor child. Making allegation that he has been put to several threat by the respondent that he will be prosecuted for dowry harassment and domestic violence, his tranquility was disturbed by the respondent. Since the child was up-rooted from Chennai disturbing his duties, G.W.O.P.No. 15 of 2016 was filed by the appellant to appoint him as the guardian of the minor child. Even before that, the respondent herself had approached the Court seeking guardianship, but, it was withdrawn later.

4.The contention raised in the Original Petition was vehemently opposed by way of counter stating that the family members of the appellant were instigating the appellant to cause trouble to the respondent. All her efforts to be with the appellant became futile due to the conduct of the appellant. The respondent was always willing to join the appellant and in fact, also caused notice through Lawyer on 26.02.2014 requesting the appellant to take back her and the child. However, that was not conceded by the appellant. Suppressing the



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fact that the child Joen Christopher studied in Little Kingdom school, the appellant filed the Habeas Corpus Petition before the Honourable High Court, but when the child was produced before the Court, he withdrew the Petition.

5.The learned Principal District Judge, theni framed the followin points for consideration:

1)Whether this Court has got jurisdiction to entertain this
G.W.O.P?

2)Whether the Petitioner is entitled for the relief of
declaration that he is the natural guardian of the minor child?

3)Whether the Petitioner is entitled to have the custody of the
minor child?

6.After assessing the evidence placed before him by way of testimony by the Petitioner/appellant, Ex.P1 to Ex.P8, the testimony of the respondent and Ex.R1 and Ex.R2, held that the minor child is in the custody of the mother since 2013 and he is presently aged about 7 years old. On interaction with the minor child on 13.11.2018, the Court satisfied that the child is comfortable with the



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mother and the conduct of the appellant does not indicate that he is interested in taking care of the minor child in true sense. Hence dismissed the G.W.O.P conferring visitation rights to the father, the appellant herein to meet his son once in two months on the last working day of the School, in which, the minor child was put up for studies, till the minor attains majority. The present Civil Miscellaneous Appeal is filed challenging the finding of the Court below.

7. According to the appellant, the non-appearance of the appellant on 13.11.2018 cannot be put to adverse inference and it was due to the conduct of the respondent who failed to produce the child on three previous hearings, the Court below instead of recording the failure of the respondent to produce the child for three continuous hearings, had only pointed out the non-appearance of the appellant on one subsequent hearing. Also, it is contended by the appellant that the finding of the Court below that the child was put in a school at Chennai and been taken care of by the parents of respondent, the learned counsel for the respondent submitted that after filing the appeal, the appellant has got married and presently he is having two children through second marriage. Hence he is further disqualified to have the absolute custody of the child, besides the reasons



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8.This Court, considering the facts and circumstances of the case, finding that after separation in the year 2013, the child continuously is with the custody of the mother, the respondent herein. About nine years have passed and the trial Court after indicating that the minor child has recorded its satisfaction that the child is comfortable with the company and custody of the mother and was not inclined to disturb the peace of the minor child by transferring the custody to the appellant.

9.In these circumstances, the reason recorded in the year 2017 while dismissing the GWO.P is still valid. Therefore, this Court finds no merit in the appeal and accordingly, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous petition is closed.

[G.J.,J.] [R.P.,J.]
20.02.2025



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NCS : Yes/No

Index : Yes / No

Internet : Yes / No

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To

The Principal District Judge,
Theni.

Copy to

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



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DR.G.JAYACHANDRAN, J.
and
R.POORNIMA,J.

vsn

JUDGMENT MADE IN

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