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C.M.A(MD)No.1158 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	19/11/2025
Pronounced on	18/12/2025

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.1158 of 2023

and

C.M.P(MD)No.15489 of 2023

R.Karthika : Appellant/Petitioner

Vs.

S.Vimalan : Respondent/Respondent

Prayer:-This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984, to set aside the Fair and Decretal order dated 20.05.2023 passed in G.W.O.P.No.91 of 2022, on the file of the Family Court, Thoothukudi and allow the present Civil Miscellaneous Appeal, giving custody of the minor child to the petitioner / mother.

For Appellant : Miss.J.Roshini for
for Mr.G.Prabhu Rajadurai

For Respondent : Mr.H.Arumugam for
Mr.S.Kumar



J U D G M E N T

(Judgment of the Court was made by the Hon'ble P.VELMURUGAN J.)

This Civil Miscellaneous Appeal is filed against the fair and decreetal order, dated 20.05.2023 passed in G.W.O.P.No.91 of 2022 by the Family Court, Thoothukudi.

2.The appellant/wife has filed a petition under Section 7, 8 and 25 of Guardians and Wards Act, 1890, seeking custody of the child in G.W.O.P.No.91 of 2022, on the file of the Family Court, Thoothukudi. The learned Judge, Family Court, Thoothukudi dismissed the said petition on the ground that at the time of filing the petition, the child was ordinarily residing in the U.S.A, therefore, the Family Court, Thoothukudi did not have jurisdiction over the matter.

3.Challenging the dismissal order made in G.W.O.P.No.91 of 2022, the appellant/wife has filed the present Civil Miscellaneous Appeal.

4.The learned counsel appearing for the appellant would submit that ever since the date of birth of the child, the respondent's mother dominated



the appellant and she refused to give the child to her. When she informed the same to her husband, he replied that if she wanted to continue in the matrimonial home, she should follow the directions of his mother. During June 2014, the appellant left for America along with her son and in-laws and after a period of four months, the parents of the respondent returned to India. In November 2017, the respondent's mother returned to India with her child in spite of her earnest effort not to send her child with mother-in-law. She was not even allowed to speak with her son through phone. In August 2018, the appellant and the respondent returned to Thoothukudi and within a week thereafter, the respondent returned to America with the son leaving the appellant at Thoothukudi. Though the respondent denied the allegations by filing counter, he did not deny that the child ever came to India. The main contention of the appellant is that though the parents of the child are the only natural guardian, the respondent ought to allow the child to be with the mother. The child was sent to India and was allowed to reside with the mother of the respondent and when the mother came to India, the respondent took the child to USA and this is the tactic adopted by the respondent. Therefore, dismissing the petition on the ground that the child was ordinarily residing in USA cannot be made applicable to the facts of the present case. The learned Judge of the Family Court failed to consider the matter on its merits and merely held that the Court lacked territorial



jurisdiction, as the child was in the USA at the time of filing the petition.

The learned counsel for the appellant further submitted that the learned Judge has failed to appreciate the fact that the respondent has also filed a petition for divorce and the same is pending. Hence, he prays for allowing this appeal and for handing over the custody of the child to the mother as she is the natural guardian.

5. The learned counsel for the respondent would submit that in the GWOP petition itself the appellant admitted that the child is residing in USA with his father and therefore, the Family Court, Thoothukudi did not have any territorial jurisdiction. Therefore, the learned Judge, Family Court, Thoothukudi, was right in holding that the Court had no jurisdiction and dismissing the petition. Though the appellant, being the mother and natural guardian of the child, is entitled to visitation rights, the learned Judge of the Family Court rightly declined to grant even visitation rights on the ground of lack of jurisdiction, which is legally sustainable; therefore, the appeal lacks merit and is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. The appellant is the mother of the child and the respondent is



the father of the child. The marriage between the appellant and the respondent was solemnized on 04.03.2012 and the appellant gave birth to a male child on 01.11.2013. The main allegation made by the appellant is only against the mother of the respondent, who did not permit her to see her son. The marriage of the appellant and respondent is admitted and the paternity of the child is also not in dispute. Though the child was born in India after sometime, both the appellant and the respondent moved to the USA due to the employment of the respondent. At that time, there arose some family disputes between them. On a careful reading of the entire pleadings, it is seen that the child was taken from India to the USA and when the mother was there in the USA, the grandmother took the child back to India and the child was residing in India for sometime and when the mother came to India, the grandmother sent the child again to the USA. The respondent/father is stated to be residing somewhere in the USA, and the child is residing at the residence of the paternal uncle in the USA.

8. It is seen from the records that the learned Judge, Family Court, Thoothukudi, has not decided the matter on its merits namely, whether the mother was acting against the interest of the child and whether the mother is entitled to the custody of the child or alternatively, visitation rights. The learned Judge, Family Court, decided the matter purely on the technical ground that the Court lacked territorial jurisdiction and dismissed the



petition for want of jurisdiction.

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9. A reading of the materials on record shows that the issue of ordinary residence is a mixed question of fact and law. However, the Family Court has not taken any point for consideration on merits. The trial Court is required to frame and decide all points for consideration, including the issue of jurisdiction, and to ensure that all such points are duly considered. However, in the present case, the Family Court has failed to do so. Therefore, the order passed by the learned Judge, Family Court, Thoothukudi, warrants interference by this Court. Accordingly, the order passed by the Family Court is set aside, and the matter is remanded back to the Family Court, Thoothukudi, for fresh consideration.

10. The learned Judge, Family Court, Thoothukudi, is directed to take up the matter afresh, frame and decide all points for consideration, including the issue of jurisdiction, and dispose of the matter on merits and in accordance with law, after affording due opportunity to both parties to advance their arguments.

11. In the result, this Civil Miscellaneous Appeal is allowed in the



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above terms and to the extent indicated herein. The impugned order passed by the Family Court stands set aside, and the matter is remanded back to the Family Court, Thoothukudi, for fresh consideration. No costs. Consequently, the connected Miscellaneous Petition is closed.

(P.V.,J.) (L.V.G.J.,)

18/12/2025

Index : Yes/No.

Internet : Yes/No.

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To:

- 1.The Family Court,
Thoothukudi.
2. The Section Officer
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.Records,



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P.VELMURUGAN,J.
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L.VICTORIA GOWRI,J.
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