

C.M.A.(MD)No.551 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 21.04.2025

CORAM

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.551 of 2018

C.M.P.(MD) No.6409 of 2018

1.Subbiah

2.Alagar

3.Chinnammal

... Appellants /respondents

Vs.

1.Thangam @ Katturaja

2.Minor.S.Dinesh

3.Minor S.Anushya devi

..Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal is filed under Section 47 of Guardian and Wards Act, 1890, against the Fair and Decreetal order made in G.W.O.P.No.101 of 2017 dated 07.02.2018 by the Principal District Court, Dindigul.

For Appellants

: Mr.A.Arul Jenifer

For Respondents

: Mr.V.Kannan

JUDGMENT

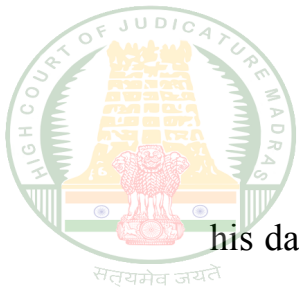


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WEB COPY Being aggrieved by the Order dated 07.02.2018 passed in G.W.O.P.No.101 of 2017 by the Principal District Court, Dindigul, the respondents, who are the father and paternal grand parents of minors S.Dinesh and S.Anushya devi, have preferred the present Civil Miscellaneous Appeal.

2.The parties are indicated herein as per their litigative status and ranking before the trial Court.

3.The case of the petitioners is that the 1st petitioner's daughter deceased Mahalakshmi was given in marriage to the 1st respondent Subbiah and the marriage was solemnized on 13.11.2009 at Arulmigu Kailasanathar Koil, Kovilpatti, Natham. At the time of their marriage, the 1st petitioner gave jewels and other articles as Sridhanam to his daughter as well as to the 1st respondent. Through their wedlock, his daughter gave birth to a male child namely Dinesh on 12.09.2010 (2nd petitioner). Thereafter, the 1strespondent demanded three sovereign of jewels and Rs.30,000/- cash to

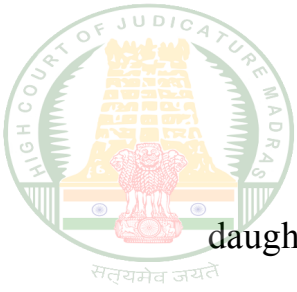


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his daughter Mahalakshmi by giving torture to her and as she was unable to bear the torture meted out, she gave a complaint on 30.03.2011 before the Manamadurai All Women Police Station and the respondents during the enquiry gave an undertaking not to demand any dowry and agreed to take Mahalakshmi with them. 1st petitioner sent his daughter along with new born baby with gold ring, silver anklets and silver waist cord. Since his daughter Mahalakshmi did not bring the jewels and cash as demanded by them, she was being abused by the respondents. She was not given proper food and made her to do all works and harassed her again. She was beaten and sent her out by demanding jewels and cash. The 1st respondent, by leveling false allegations, issued a legal notice and thereafter filed divorce petition in H.M.O.P No.114/11 before the Sub-Court, Dindigul. When the said case was pending, his daughter gave birth to a girl child Anushya devi on 08.11.2011 (3rd petitioner). The 1st respondent took a plea that the girl child was not born to him. As the 1st respondent felt that he would not succeed in the HMOP, he withdrew the petition and called his daughter to their house. His daughter was sent with her child with gold ring, silver anklets and silver waist cord. The respondents again started harassing his daughter Mahalakshmi and he received an intimation on 12.04.2014 that his

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daughter Mahalakshmi was no more. On enquiry, he came to know that the respondents harassed her by demanding dowry and the respondents are responsible for the death of his daughter. His complaint before Sanarpatti Police Station was registered in Crime No.96/14 and the same is pending.

4.It is the further case of the 1st petitioner that the minor children are in the custody of the respondents. The respondents never show any care or interest on the minors. The respondents are taking steps to conduct second marriage to the 1st respondent. The 1st respondent has already claimed in the divorce proceedings that the 3rd petitioner (Anusiya devi) did not born to him. If the minors, 2nd and 3rd petitioners are allowed to be in the custody of the respondents, it would seriously affect the future of the minor petitioners. The 1st petitioner further states that he is very much interested in taking care of the minor children. He has got so much of affection towards the minor grand children. If the minor children are allowed to live with the respondents, the life of the minor petitioners could be in danger.

5.Contending contra, the respondents have stated that the 1st



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petitioner has no legal right to file the Guardian Wards Original Petition, as

the 1st respondent is the natural guardian for the minor children. The 1st petitioner either at the time of the marriage of his daughter or after the birth of the minor children did not give any jewels or other articles. The fact that they demanded jewels and cash and harassed the deceased Mahalakshmi are false. In fact, the deceased Mahalakshmi created problems very often in the family and she was not interested to live with the 1st respondent and left the matrimonial home. During the divorce proceedings, the issue was settled and the divorce petition was withdrawn. Due to envy upon the respondents, this petition is filed. The minor children are now under the care and custody of the respondents and the 1st respondent is taking proper care and interest on the children in the capacity of father/natural guardian for the minor children. The 1st petitioner never showed any care or interest on the minor children. When the 1st respondent who is the natural guardian is taking care of the minor children, the 1st petitioner's contention to the effect that the future of the minor children would be affected if they are allowed to remain in the custody of the respondents are baseless and imaginary. The petitioners and the respondents have no connection with each other and



there is no cause of action.

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6.It is further contended by the respondents that the 1st petitioner is having two wives and through his 1st wife Polachiyar, he has four sons and four daughters. Except Mahalakshmi all other children remain unmarried. The 1st petitioner married another woman and got two children through her. Whereas the 1st respondent is the only son of respondent Nos. 2 and 3 and his two sisters got married and they are living at their matrimonial home. The respondents are owning lands which yield good income. The 2nd respondent has settled his self-acquired property namely lands situated at Ragalapuram Village to an extent Acres of 3.09 cents in favour of his nephew minor Dinesh. In the year 2014, the 2nd respondent has also got some gold jewels for his minor nephew Anushya devi.

7.At trial, to substantiate the petition details on the petitioner side, one witness was examined and eight documents were marked. On the respondents' side, the 1st respondent and one Jeyaraman were examined and five documents were marked.



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WEB COPY 8. Law is well settled that paramount consideration is the welfare of the minor children. The Court shall have regard to the age and sex of the minor, the character and capacity of the proposed guardian and his nearness of kinship to the minor, the wishes, if any of deceased parent, and any existing or previous relations of the proposed guardian with the minor etc.

9. The maternal grand father filed G.W.O.P for appointing him as guardian of the minor children born to his deceased daughter Mahalakshmi. The 1st petitioner who is the maternal grand father of the minor children would contend that the children are suffering with the respondents and they do not have any interest in the welfare of minor children. Further P.W.1 would state that the 1st respondent who is the son-in-law is taking efforts to get another marriage. He would further state that he is very affectionate on the children and the children are also very affectionate on him and he is more interested to take care of the children and to educate them.

10. Whereas the 1st respondent/R.W.1 would state that he is the natural guardian of his minor son and daughter and it is false to state that



the 1st petitioner is very affectionate towards the minor children.

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11. One Jayaraman is examined as R.W.2. It is his evidence that the children are taken care of by the 1st respondent and they are studying in the school.

12. On two grounds, OP was allowed by the trial Court;

1. Father of the minor children raised paternity issue as regards his 2nd child, as a child was born after filing of divorce OP.
2. Unnatural death of the wife of the 1st respondent.

13. It appears from the careful analysis of evidence of both sides, the deceased Mahalakshmi lodged a complaint on 30.03.2011 before the Manamadurai All Women Police Station and the said fact was admitted by R.W.1/1st respondent. It appears that during the RDO enquiry, RW1 stated that the children were not born to him. In this factual background considering the welfare of the minor children the issue has to be sorted out.

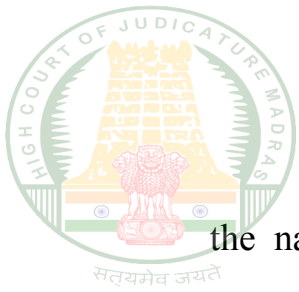


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14.From the proof affidavit of P.W.1 (1st petitioner), it is evident that he was 60 years old in the year 2017. At present his age is 69 years. From the evidence of P.W.1, it is deducible that he has four sons and four daughters through his first wife Polachiyar and he also married the sister of his first wife and through her he has got two children. It is quite natural that after the death of his daughter, as he is not in a position to visit the minor children at the residence of the 1st respondent, he has filed this petition. It is relevant to note that his wife, namely mother of the deceased Mahalakshmi, did not press the petition as she would find difficult to take care of the grand children and she is taking care of her other seven children.

15.As regards the financial status of P.W.1, he has not stated anything in his evidence. Whereas R.W.1 would state that his father owns lands to an extent of 3 acres and the same is settled in favour of his minor son Dinesh by his father 2nd respondent herein. R.W.1 would also state that he is the only son of his parents and his two sisters got married and living in their respective matrimonial home.

16.Presently the children are being brought up by their father who is



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the natural guardian of the children. However, on earlier occasion, this Court had an occasion to interact with the children and it is observed by this Court that the children are comfortable with their father. No doubt, R.W.1 had disputed the parentage of the children during the matrimonial proceedings and before the RDO and it cannot be taken in a casual manner. Therefore, the trial Court has raised a serious issue that in such circumstances, the 1st respondent cannot take care of the children in a proper way.

17.In consideration of the age of the 1st petitioner and the fact that he has two wives and nine children and are being taken care of by him and on the other hand, the 1st respondent is the only son of his father and the children are now comfortable with their father, this Court is of considerable view that the paramount consideration in the matters of appointment of guardian is welfare of the child throughout. In such a view of the matter the finding of the trial Court has to be necessarily interfered with.

18.It appears that minor S.Dinesh and minor S.Anushya Devi are presently studying 9 and 8th standard at Antony Higher Secondary School,



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Posavapatti, Dindigul District respectively.

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19. Based on the observations and discussions, this Civil Miscellaneous Appeal stands necessarily has to be allowed and thereby stands allowed. Sequel to this, Order dated 07.02.2018 passed in G.W.O.P.No.101 of 2017 by the Principal District Court, Dindigul stands set aside. There is no order as to costs. Connected Miscellaneous Petition if any stands closed.

20. The fact that the 1st petitioner Thangam @ Katturaja has lost his married daughter Mahalakshmi and since both the parties are inimical, the interest justice would met that the maternal grand father is granted visitation rights. The maternal grand father (1st petitioner) is granted visitation rights to the effect that he may visit the children once in a month on the last Sunday between 10.00 a.m. to 11.30 a.m., at Kaliasman Koil which is situated at Manjanayakampatti Village.

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Speaking Order/Non Speaking order
Neutral Citation Case:Yes / No

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- 1.The Principal District Court,
Dindigul.
2. The Section Officer,
V.R Section,
High Court, Madras.



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R.KALAIMATHI.J.,

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