

CMA(MD)No.272 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 01.08.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

CMA(MD)No.272 of 2020

and

CMP(MD)No.3724 of 2020

1. Mohamed Yasin
2. Umalhamsa

... Appellants

vs.

Rabeek Raja

... Respondent

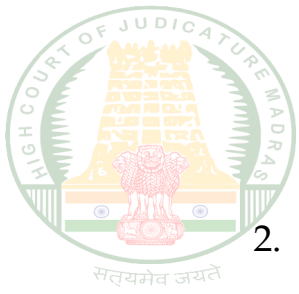
Appeal filed under Section 47 of the Guardians and Wards Act, 1890 to set aside the fair and decreetal order dated 07.03.2019 made in GWOP.No.4 of 2018 before the learned Family Court, Sivagangai.

For Appellant : Mr.S.Kameswaran
For Respondent : Mr.K.Chengiz Khan

JUDGMENT

[Judgment of the Court was made by **A.D.JAGADISH CHANDIRA, J.**]

This Civil Miscellaneous Appeal has been filed seeking to set aside the fair and decreetal order dated 07.03.2019 made in GWOP.No.4 of 2018 before the learned Family Court, Sivagangai.



2. Brief facts of the case are that the respondent married one

Aminabegam who is the daughter of the appellants herein. The respondent lived with Aminabegam for few months and went to abroad. The said Aminabegam begotten a male child namely, Arsathmeera. The said Aminabegam told the respondent that she had love affairs with another person before her marriage with the respondent. Thereafter, on 13.03.2013, Aminabegam committed suicide for her mental agony. The appellants lodged a complaint against the parents of the respondent and the case ended in acquittal. While so, the appellants took away the minor child from the respondent. Contending that the appellants did not allow to visit the minor child, the respondent filed GWOP.No.4 of 2018 before the Family Court, Sivagangai, seeking custody of his minor child.

3. The appellants/grandparents filed counter contending that the parents of the respondent abused, insulted and committed dowry harassment to their daughter Aminabegam and only due to the same, their daughter committed suicide in the respondent's house. The respondent had not even come to the death of Aminabegam and had not



at all taken care to the minor child till date. Further, the respondent

contracted a second marriage with one Roja for his welfare and therefore

he will not properly take care of the child and provide good education.

4. The Family Court framed the following issues:

"1. Whether this petitioner is entitled to get the relief of custody of the minor child namely, Arsathmeera?

2. To what other relief this petitioner is entitled?"

5. After hearing both sides, the Family Court, finding that the respondent/husband had left India when the minor boy was in the womb of his mother and his wife had committed suicide in the respondent's house when she was living with the parents of the respondent and that the respondent had never turned up to India to see the minor child even from the date of his birth till his wife committed suicide, had held that the minor child was not at all under the guardianship of the respondent even from the date of birth till the death of the mother of the minor child and holding so, the trial Court had granted custody to the grandparents. While granting custody, the Court

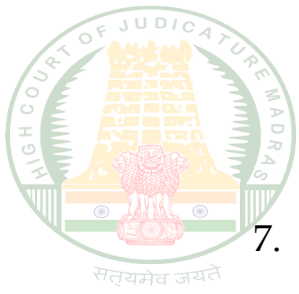


CMA(MD)No.272 of 2020

had granted visitation rights to the respondent on the first and third

WEB COPY Sunday of every English calendar month in Thiruppathur in a common place as decided by both the parties in the presence of the appellants from 09.00 a.m. to 04.00 p.m.

6. The appellants/grandparents though were granted custody of the child, have filed this appeal. The learned counsel for the appellants would submit that though the prayer has been sought seeking to set aside the order passed in GWOP.No.4/2018, the fact remains that the appellants have intended to challenge only the second part of the GWOP order granting visitation rights to the respondent/father. He would further submit that the respondent during his earlier visit, had created problem with the appellants and that thereafter, he did not come to visit the child. On the earlier occasion, the appellants were present before this Court on 11.07.2025. We enquired the 1st appellant. He fairly stated that though visitation rights had been granted to the respondent/father, he has not visited the minor child even once and he has also not seen the minor child right from his birth.

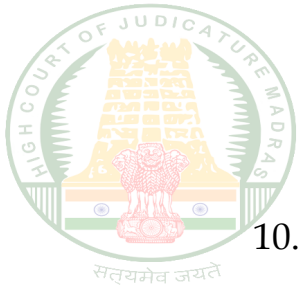


CMA(MD)No.272 of 2020

7. We directed the appellants to be present along with the child before this Court on 24.07.2025. The appellants fairly conceded that the respondent/father has not visited the child right from his birth and even after passing of the order in GWOP on 07.03.2019, he has not visited the child once.

8. Learned counsel for the respondent would submit that he has no instructions.

9. Admittedly, the respondent is the father. The Family Court while granting custody to the appellants, had granted visitation rights to the respondent who is the biological father. We find that the respondent/father has not exercised the right of visitation even once. We do not find that the respondent/husband has created any problem in the house of the appellants. Since the respondent is legitimately entitled to visit his child, we are not inclined to interfere with the order of visitation.



CMA(MD)No.272 of 2020

10. Accordingly, the Civil Miscellaneous Appeal stands dismissed. However, we make it clear that in the event of the respondent creating problem while exercising visitation rights, the appellants are entitled to approach this Court seeking modification. No costs. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [R.P., J.]
01.08.2025

Index : Yes / No

Neutral Citation : Yes / No

bala

To

The Judge,
Family Court,
Sivagangai.



WEB COPY



CMA(MD)No.272 of 2020

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

bala

JUDGMENT MADE IN
CMA(MD)No.272 of 2020
DATED : 01.08.2025