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CMA(MD).No.1384 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2025

CORAM

**THE HONOURABLE MR JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS JUSTICE R.POORNIMA**

CMA(MD)No.1384 of 2024

and

CMP(MD)No.15014 of 2024

A.Arockiya Anandharajan : Appellant/ Respondent

Vs.

M.Sumithradevi

through her mother Mrs.Mariammal as power of attorney

: Respondent/Petitioner

PRAYER:-Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, to set aside the order dated 18.09.2024 passed in G.W.O.P No.435 of 2023, on the file of the Family Court, Dindigul.

For Appellant : Mr.J.Pandi Dorai

For Respondent : Mr.Punithadevakumar



J U D G M E N T

(Judgment of the Court was made by the Hon'ble **R.POORNIMA.J**)

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This Civil Miscellaneous Appeal is preferred by the Appellant/respondent/father against the order dated 18.09.2024 passed in G.W.O.P No.435 of 2023, on the file of the Family Court, Dindigul.

2.The appellant/respondent/father contends that being the natural guardian, he is entitled to custody. In the present case, the materials placed on record reveal that the marital relationship between the parties has been strained for a considerable period. Allegations and counter-allegations have been made regarding dowry harassment, desertion, and forcible removal of the children. While it is not necessary in custody proceedings to render definitive findings on each matrimonial allegation, the surrounding circumstances assume significance.

3.The mother who is the power agent of petitioner asserts that the children were forcibly taken by the respondent. The respondent/father, on the other hand, claims that the petitioner voluntarily left the children and went abroad.



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4.The learned Family Judge, upon appreciation of oral and documentary evidence, thought it fit to allow the petition while granting visitation rights to the respondent/father/appellant.

5.This court has to decide whether that the order passed by the trial is sustainable or liable to be dismissed and whether the appellant is entitled for custody of the child?

6.The contention of the appellant that the petitioner deserted the children at a tender age is an admitted fact . There exists matrimonial disputes between the parties, owing to which the respondent/wife has been living separately. Though allegations of dowry harassment have been raised, it is relevant to note that no formal complaint or criminal proceedings were initiated by the respondent in this regard.

7.It is admitted fact that the respondent/wife left the minor children in the care of her mother when they were approximately one year and eight months old and proceeded abroad on 21.10.2021. Thereafter, the appellant/father, being the biological parent, assumed custody of the children.



8.It is seen that multiple complaints were lodged by the respondent's mother alleging that the children had been kidnapped by their father. The respondent, through her mother acting as Power of Attorney, also filed H.C.P.(MD)No.1116 of 2022 before this Court alleging illegal detention. However, this Court categorically held that there was no illegal detention and that the children were in the lawful custody of their father. Visitation rights were accordingly granted.

9.The respondent/wife subsequently instituted the present custody proceedings through her mother as Power of Attorney. At the time of filing the petition, the respondent was residing abroad and admittedly returned to India only for the purpose of giving evidence, pursuant to directions issued by the Trial Court.

10.Significantly, the respondent/wife has not made any grave or serious allegations affecting the father's suitability, except asserting that he was unemployed and incapable of maintaining the children. In rebuttal, the appellant/father has produced documentary evidence, including a salary certificate, establishing his employment. He has also produced school receipts demonstrating that he has been meeting the educational expenses of the minors.



11.The Trial Court itself has repeatedly recorded that the children were happy in the custody of the father. Custody cannot be denied merely on the ground of financial comparison unless it is shown that the welfare of the minors is adversely affected.

12.While determining custody, the Court must primarily examine the following:-

- (i)Whether the children are safe and well cared for?
- (ii)Whether the parent in custody has shown neglect?
- (iii)Whether any adverse interest or disqualification exists?

13.In the present case, there is no material to show that the father neglected the children, acted against their welfare, or suffered any disqualification. It is not the case that he has contracted a second marriage or subjected the children to ill-treatment. Though both parents are natural guardians and possess equal rights, the factual matrix discloses that the respondent/wife had voluntarily left the children at a tender age and remained abroad for a considerable duration. The respondent's mother, admittedly, is not a natural guardian when the



father is alive. The evidence placed on record clearly establishes that the children have been residing with the father, pursuing their education, and living in a stable environment.

14. There can be no dispute that both parents are equally obligated to maintain the children. However, the paramount consideration remains the welfare and best interests of the minors. This Court interacted with the children, and they have unequivocally expressed that they are living happily with their father. Their well-being, comfort, and emotional stability assume decisive significance.

15. Considering the subsequent development that the respondent/wife has now returned from Dubai and is residing in India, this Court deemed it appropriate to implement an interim arrangement permitting each parent to retain custody of one child. It is brought to the notice of this Court that under the said arrangement, the children are living happily with their respective parents without any grievance. In such circumstances, this Court is of the considered opinion that the present arrangement serves the welfare of the minors.



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16. In order to preserve the sibling bond and ensure emotional continuity, the following directions are issued:

(i) The parents shall facilitate meetings between the children during holidays, either at the residence of the appellant/father or the respondent/wife.

(ii) If such an arrangement is impracticable, meetings may occur at a mutually convenient public place in the presence of both parents.

(iii) Each parent shall have visitation rights with the child presently in the custody of the other parent on alternate Saturdays and Sundays, with liberty to take the child to their residence during such visitation.

17. It is further directed that:

In the event the respondent/wife intends to leave India, she shall hand over custody of the child to the appellant/father. The custody shall not be entrusted to the grandmother, who is not the natural guardian.

18. Accordingly, the point for consideration is answered.



CMA(MD).No.1384 of

19. In view of the above, this Civil Miscellaneous Appeal is

partly allowed. No costs. Consequently, connected Miscellaneous

Petition is closed.

(G.K.I.J) (R.P.J.,)

15.12.2025

Index: Yes/No

Internet: Yes/No

er/rm

To

1. The Family Court,
Dindigul.

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



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