

C.M.A.(MD)No.60 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 21.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.60 of 2020

and

CMP(MD)No.1007 of 2020

Divya Roopa

... Appellant

Vs.

Selvakumar

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act, 1890, to set aside the judgment and decree dated 05.09.2019 made in G.W.O.P.No.15 of 2017 on the file of the I Additional District Judge, Madurai.

For Appellants : Mr.A.Raja

For Respondent : M/s.M.Maria Vinola



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JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the judgment and decree dated 05.09.2019 amade in G.W.O.P.No.15 of 2017 on the file of the I Additional District Judge, Madurai.

2. For the sake of convenience, the parties herein are referred to as per their rank in the GWOP.

3. The brief facts in a nutshell are as follows:

The appellant herein is the petitioner in the GWOP and her estranged husband, Selvakumar, is the respondent. The petitioner filed an application under Section 7 of the Guardian and Wards Act, 1890, before the District Court, Madurai, in G.W.O.P.No.15 of 2017, seeking a relief to be appointed and declared as the guardian of her minor daughter, Niharika, born through her marriage with the respondent, namely Selva Kumar.

4. The learned trial Court examined the petitioner as P.W.1 and marked Ex.P.1 to Ex.P.9 on the side of the petitioner and examined two witnesses on the side of the respondent and marked Ex.R.1 to Ex.R.9 on



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the side of the respondent and Ex.X.1 was marked as court document.

After hearing the arguments of both sides and on perusing the materials available on record, the learned trial Court dismissed the aforesaid G.W.O.P with cost. Challenging the same, the present appeal is filed.

5. The learned Counsel appearing for the petitioner wife categorically submitted that the petitioner has the custody of her minor daughter from the date of her birth until now and as on date she is employed in Australia. He further submitted that her marriage with the respondent, namely, Selva Kumar, was a second marriage. After divorcing her first husband, Ranjith, in the year 2004, she married the respondent on 25.05.2008 in a love cum arranged marriage. Out of the said wedlock, they were blessed with a daughter, namely, Niharika, who was born on 01.12.2010. However, in due course of time, indifferences arose between the petitioner wife and the respondent husband, as a result of which, they have filed a petition for mutual divorce in H.M.O.P.No.70 of 2015 on the file of Subordinate Court, Kanchipuram on 15.06.2015. The petition for mutual divorce was filed under Section 13 (3) of the Hindu Marriage Act, 1955. Prior to filing the petition for mutual divorce, they had entered into a memorandum of understanding, in which the respondent husband mutually



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agreed to settle an amount of Rs.22,00,000/- of which Rs.11,00,000/- to be paid to the petitioner wife as a permanent alimony and Rs.11,00,000/- towards the future maintenance of their minor daughter and that the custody of the child would be with the petitioner wife, while the respondent husband would have visitation rights.

6. He further submitted that, on the agreed terms, the petition for mutual divorce was filed before the learned Subordinate Judges Court at Kanchipuram. The evidence of both parties was deposed before the learned Subordinate Judge, Kanchipuram, on 17.12.2015, and a decree of divorce was granted on 08.02.2016. Thereafter, the petitioner married Vishak, who is also employed in Australia and he is the cousin of the petitioner. The petitioner is happily married to her third husband, Vishak and they have been blessed with a daughter. Her third husband Mr. Vishak is taking care of her minor daughter through her second husband as his own child, without any indifference or discrimination. For the future well-being and psychological balance of the child, it is necessary that the petitioner should be appointed as the guardian, thereby undoing the respondent's rights over the child. Hence, the petition was filed. However, the learned trial Court, without taking into account that the respondent had



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not even bothered to exercise his visitation right's, dismissed the GWOP, and pressed for allowing this appeal.

7. The learned Counsel appearing for the respondent, who has been appointed through the Legal Aid, categorically submitted that, the entire narration put forth by the learned Counsel for the petitioner wife is absolutely false and exaggerated. This is a clear case where the petitioner has a habit of marrying multiple times, while a marriage is still subsisting. She was first married to one Ranjith as early as in the year 2004, but later divorced her first husband. The respondent husband was working as an IT professional in Chennai, and the petitioner was also working as an IT professional in Chennai. They met each other and they fell in love, as a result of which, her marriage was arranged for the second time. The marriage between the petitioner and the respondent was held on 25.05.2008. However, the factum of her first marriage was suppressed by the petitioner wife to the respondent husband at the time of marriage and this was the first marriage of the respondent husband. The learned Counsel for the respondent further relying upon the order passed by the learned trial Court categorically submitted that there was no proof which was put forth either by the petitioner or the learned Counsel for the petitioner before the



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trial Court that she had legally divorced her first husband. Thereafter, the learned Counsel further proceeded to submit before this Court that after marriage, the petitioner and the respondent husband were blessed with a girl child, born on 01.12.2010. After the child's birth, the respondent went to work in Australia and only with the aid of the respondent husband's visa, the petitioner, along with the child and her second husband, travelled to Australia, from where she managed to get a job while the respondent continued working in Australia.

8. However, in due course of time, without the knowledge of the respondent husband, the petitioner somehow came into contact with her cousin, Vishak, who is younger by age. In view of the same minor quarrels which actually transformed into major quarrels emanated in the matrimonial life between the petitioner and the the respondent husband. As a result, the marriage reached to a culminating point of no returns and they mutually agreed to enter into a divorce. Consequently, the respondent husband agreed to pay a permanent alimony of Rs.11,00,000/- to the petitioner wife and Rs.11,00,000/- for the future maintenance of the minor daughter, reserving visitation rights for himself, considering the welfare of the child and that the girl child should be under the care and custody of the



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mother. However, he reserved his right of visitation. Based on these terms, a mutual divorce petition was filed before the Subordinate Judge, Kanchipuram in HMOP No.70 of 2015 on 16.06.2015 and an evidence was deposed on 17.12.2015 and the matter was posted for orders on 08.02.2016. Even before the divorce decree was passed by the matrimonial Court concerned, the petitioner was in a hurry to marry for the third time with her cousin Vishak and proceeded to marry on the very next day of the date of evidence in the divorce proceedings, i.e., on 18.12.2015. She then fled to Australia with her third husband along with the child of the second respondent. Thereafter, she has filed this petition seeking to appoint and declare herself as the guardian of the minor child, Niharika. The learned trial Court, going well through the nature of the circumstance and the conduct of the petitioner, who had entered into several marriages during the subsistence of her earlier marriages, the learned trial Court rightly felt that the future of the girl child would not be safe in the hands of the mother and dismissed the guardian GWOP and that is well founded on the basis of evidence and the same need not be interfered with and pressed for dismissal of the appeal.

9. Heard Mr.A.Raja, learned Counsel appearing for the appellant,

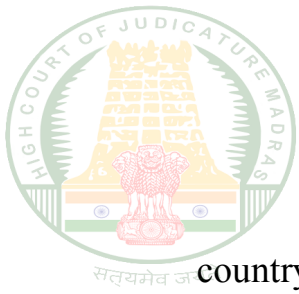


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M/s.Maria Vinola, learned Counsel appearing for the respondent and carefully perused the materials available on record.

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10. Being a father to a girl child is a boon for every man. A daughter is akin to a mother to every father. This is a case where a father, despite divorcing the petitioner and married again and being blessed with two other children, is striving before this Court to uphold his right as the guardian of his minor daughter through his divorced 1st wife, for the sole reason that he is waiting for her to return from Australia upon attaining the age of majority, at which time she will be able to withdraw the amount of future maintenance which her father had fondly deposited in a nationalized bank in Madurai. The claim of the petitioner wife is that it is more significant for her to be appointed as the guardian of the minor daughter, as it is necessary to maintain the emotional and psychological balance of the minor child. However, a biological father can never be substituted by a stepfather at any point of time. The right to marriage and right to marry multiple times after proper divorce is a fundamental right of both men and women, which this Court is not bothered to interfere with. However, the right of access to a natural father, more particularly with respect to a girl child, should be dealt with sensibly by the Courts of law, that too in a

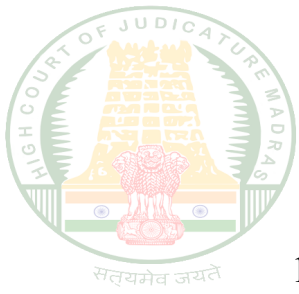


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country like India, where the family system is given predominance in nurturing the culture of this great nation.

11. No doubt the trial Court has gone into the nuances of the nature of the petitioner wife, who had indulged in marrying thrice during the subsistence of her earlier marriage. The trial Court has rightly observed that the petitioner wife failed to prove before the learned trial Court that she had legally divorced her first husband, Ranjith, before marrying the respondent for the second time. She had not marked any divorce decree before the learned trial Court. Similarly, the respondent husband has clearly proved that she married for the third time during the subsistence of her second marriage. I have nothing to comment on such conduct of the appellant / petitioner. However, I am bothered about the plight and request of the respondent, who has pleaded before this Court, through his Counsel that it is his right to be the guardian of his minor daughter always, in which the father had cautiously preferred to remain at calm without interfering with the peaceful living of his daughter with her mother. It may be the preference of the child to remain with the mother, or the mother might have prevented the father from visiting his daughter.



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12. The learned Counsel for the respondent even submitted that when the father travelled back to Australia to visit the child for 10 days, he was permitted to meet his daughter only for one day. Though the learned Counsel for the petitioner wife categorically submitted that it is more important for the appellant to be appointed as the guardian of the minor child, exclusively for the purpose of travelling from country to country, and that if she is not appointed as the guardian, it will impede the child's right to travel without hindrance. I find it more important that the child's right to access her father should not be disturbed. If this Court is inclined to allow this appeal, I am afraid that the child will be permanently denied proper access to her natural father. With due respect to all the greatest fathers of this nation, and especially the the greatest fathers of the girl children in this nation, I am not inclined to entertain this appeal.

13. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

NCC : Yes / No
Index : Yes / No
Internet : Yes
jbr

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- To
1. The I Additional District Judge, Madurai.
 2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

jbr

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