



C.M.A(MD)No.1319 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.11.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.1319 of 2025

R.Muneeswaran

... Appellant/ Petitioner

Vs.

1.Sakthivel

2.Murugeswari

...Respondents/respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 24.05.2024 made in G.W.O.P.No.70 of 2022 by the Family Court, Theni.

For Appellant : Mr.H.Velavadhas

For Respondents : Mr.S.Arokiya Selva Prakash



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JUDGMENT

The appellant/petitioner has filed this Civil Miscellaneous Appeal against the fair and decretal order dated 24.05.2024 made in G.W.O.P.No.70 of 2022 by the Family Court, Theni.

2.The brief case of the petitioner is as follows:-

(i) The respondents are the father-in-law and mother-in-law of the petitioner. The petitioner's wife namely, Subbulakshmi died on 13.03.2020, for which a murder case has been foisted against the petitioner and his family members by the Bodinayakanur Town Police Station. Now the petitioner and his family members released on bail.

(ii) After registering the FIR, the petitioner's daughter and son were maintained by his brother's wife. After a week the respondents came and took away the minor children by issuing threats and they were taken to remote area. The petitioner is the natural and legal guardian of the minor children. However, the respondents are illegally keeping the minor children in their custody and not permitting the petitioner to see them.

(iii) The respondents have influenced and misguided minor



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son and daughter by instigating false notions and ill-feelings against the petitioner and his family members. Therefore, the petitioner prays this Court to direct the respondents to hand over the custody of the minor children namely, Shyamala and Rajeswaran to the petitioner.

3. According to the respondents, the petitioner and his family members killed their daughter Subbulakshmi on 13.03.2020. The petitioner's brother's wife Sivajothi called the respondents over phone by saying that the minor children were crying and asked to take them. Apart from that the petitioner's uncle also called the respondents and ask them to took up the children. Thereafter, only the respondents took up and children and maintained them. The children are now living at Srivilliputhur with them and educated by them. Hence, prayed for dismissal of the petition.

4. During trial, on the side of the petitioner, P.W.1 to P.W.3 were examined and Exs.P1 to P5 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 to R5 were marked.



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5. After hearing the parties and perusing the records, the Family Court, dismissed the petition. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the appellant who is the petitioner before the Family Court, Theni, with the following among other grounds:-

(i) That the trial Court has not considered the arguments; documentary evidence placed by the petitioner and passed the order in vague and merit less.

(ii) That the trial Court has not gone into the counter-statement filed by the respondent properly; there is no specific plea that the respondent is having proof of the capacity to maintain the minor children.

(iii) That the trial Court has not considered the commentaries made in Section 6 of Guardianship and Wards Act "Natural guardians of a Hindu Minor". The trial Court has not considered that no person shall be entitled to act as the natural guardian of a minor.

(iv) That the trial Court order is against the provisions stated in Section 8 of Guardianship and Wards Act, the said provisions enumerates powers of natural guardian.

(v) That the trial Court order is against the provisions stated



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in Section 13 of Guardianship and Wards Act, the said provision extremely important provision and deals with welfare of a minor.

Therefore, prayed to set aside the order of the trial Court and allow the Civil Miscellaneous Appeal.

6.Heard the learned counsels appearing for the parties and perused the materials available on record.

7. Now, this Court has to decide the following point for consideration:-

Whether the order passed by the trial Court is sustainable or liable to be set aside ?

8.Point :

The appellant/petitioner, who is the father of the minor children, has filed a petition under Section 24 of the Guardian and Wards Act, 1890 seeking appointment of guardian for minor Shyamala and Rajeshwaran who are presently in the lawful custody by the respondents.



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9. The learned counsel appearing for the respondents submitted that the daughter of the respondents was murdered by the petitioner and his family members and pursuant to which two criminal cases were registered and Sessions case has also taken on file and is presently pending trial. He further stated that the respondents are maternal grand parents of the children and then the petitioner had left the children in the custody of his brother's wife. However, the children contacted the respondents over phone and requested them to take away from that place and at their request only, the children were taken by the respondents.

10. According to the appellant/petitioner, after the death of his wife, whom as the natural guardian, he alone is only entitled to have their custody and to look after that. He further contended that when he was arrested, the respondents took the children without his permission. He also stated that he is serving in an Indian Army and has sufficient means to look after the children.

11. However, the respondents alleged that the appellant had an illicit relation with another lady and an account of the same he



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ill-treated their daughter and murdered her. They further contended that the appellant did not provide any maintenance amount for the minor children and only after they initiated a maintenance petition before the Court for did ne begin to sent the money for their maintenance.

12. According to the appellant/petitioner the respondents had influenced the children against him and had spread false information about him. However, their allegations were not accepted by the Trial Court.

13. The trial Court in its order, observed that although an opportunity had been granted to the appellant to meet the children at the Legal Aid Services Authority Centre on 2nd and 4th Monday of every month from 11.00 a.m., to 12 a.m., but he failed to not utilised the opportunity and the Court also found he had taken steps to maintain the children. However, it is established that the respondents who are maternal grandparents have been looking after the children and providing for them education and they do not have any adverse interest towards the minor. It is the duty of the Court to consider the welfare of the minor children which deciding issues of custody. In the present case this Court



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find that the petition did not continuously maintain the children only paying some amount pursuant to an order by his superior at the instance of the Court. The trial Court after take into account of all facts and circumstances rightly dismissed the petition, this Court do not find any infirmity in the order.

14. Since a criminal case is pending against the petitioner and considering that it is safe for the children to remain in the custody of the respondents, who are none other than their maternal grandparents, this Court is of the opinion that there is no merit in the Civil Miscellaneous Appeal. Hence, this Civil Miscellaneous Appeal is liable to be dismissed.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the impugned order dated 24.05.2024 passed in G.W.O.P.No.70 of 2022 dated 01.04.2009 by the Family Court, Theni, is hereby confirmed. No costs.

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Index : Yes / No
NCC : Yes / No
RM



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To

1.The Family Court,
Theni.

Copy to

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



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R.POORNIMA, J.

RM

Judgment in

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