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O.S.A. No. 142 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.05.2022

CORAM

THE HON'BLE MR. JUSTICE S.M. SUBRAMANIAM

AND

THE HON'BLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

O.S.A. No. 142 of 2022

&

C.M.P. No. 8712 of 2022

C. Shamilakumari

..Appellant

Vs.

P. Chandrasekar

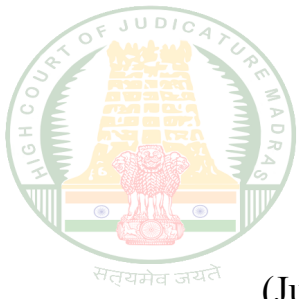
..Respondent

Prayer: Original Side Appeal under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent Act to set aside the order and decretal order dated 08.04.2022 in O.P. No. 632 of 2022.

For Appellant :: Mr.A.D. Janarthanan

For Respondent :: Mr.G.V. Sridharan

J U D G M E N T



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(Judgment of the Court was delivered by **S.M. SUBRAMANIAM,J.**)

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The Original Side Appeal has been instituted challenging the order and decretal order dated 08.04.2022 passed in O.P. No. 632 of 2022. The appellant was the petitioner in the said O.P.

2. The marriage between the appellant and the respondent was solemnised on 11.12.2002 at Vadapalani Murugan Temple, Chennai in accordance with Hindu rites and customs. Out of the wedlock between the appellant and the respondent, two daughters were born. The elder daughter, by name,, was born on 06.05.2006 and the younger daughter by name was born on 21.07.2010.

The appellant is working as a Head Constable in Tamil Nadu Police Department and presently, she is posted at All Women's Police Station, Thousand Lights, Chennai. The respondent is employed as a Junior Assistant in Tamil Nadu Electricity Board.

3. Due to misunderstanding and frequent quarrels between the appellant and the respondent, they filed a consent divorce application in O.P. No. 4376 of 2017 on the file of the Family Court and a decree of divorce by way of mutual consent was granted by the competent court on 16.08.2018.



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WEB COPY 4. The appellant states that the respondent is a person of adamant nature and never considered her or her family members. He is a politically influential person and gave several complaints against the appellant in the Police Department itself with false allegations. With his personal influence, the respondent took the appellant to Redhills and admitted her in Ocean Rehabilitation Centre for mental treatment in July, 2014 without the knowledge and consent of the appellant, who was very much working in the Police Department. The appellant states that her hands and legs were kept tied for two days by the staff of the Rehabilitation Centre. Thereafter, with the help of her mother and uncle, the appellant was released from the Rehabilitation Centre. Even after that, the appellant was continuously harassed by the respondent.

5. The appellant, being a working woman, was initially, not in a position to look after her children and her mother assisted her to maintain the children properly. However, the respondent had forcibly taken the children to his sister's house and the appellant, at one point of time, was not even permitted to see her children. The appellant was forced to leave her residence and the minor children were taken to the residence of the sister of



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the respondent. Initially, the appellant was visiting the minor children in the house of the respondent's sister till the year 2016 and thereafter, the respondent prevented the appellant from visiting the children and therefore, the appellant was constrained to file O.P. No. 632 of 2016 seeking custody of her minor daughters.

6. In the said O.P., an application in A.No. 4676 of 2016 was filed seeking interim custody of the minor children for two days in a month and an interim order was passed granting custody of the children to the appellant during weekends. However, the said order was not honoured by the respondent. Contrarily, the respondent continued to be adamant and had not allowed the appellant to see the children. The O.P. was taken up for final adjudication on 08.04.2022 and was dismissed by the impugned order. Hence, the present Original Side Appeal has been filed.

7. The appeal was filed mainly on the ground that the appellant is the mother of the minor children and she was not even permitted to visit her children. Both the minor children are female children and the care and assistance of mother is essential. It is further contended that the respondent is not looking after the minor children and he had left the children in his



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sister's house and they are now under the custody of the sister of the respondent, who is a third party.

8. The appellant has raised several allegations against the respondent. According to the appellant, the respondent is not leading a moral life and he has committed an act of cruelty both against the appellant as well as against the minor children. The minor children are residing in the residence of the sister of the respondent and the appellant has not been allowed to visit the children. Though the interim custody application in Application No. 4676 of 2016 was allowed by this Court, the said order was not complied with, by the respondent and he did not produce the children for more than three years as per the orders of this Court.

9. The learned counsel for the respondent objected the said contentions by stating that the children are happy with the respondent/father. The interest of the children is being looked after by the sister of the respondent as the respondent is employed as Junior Assistant in Tamil Nadu Electricity Board. The learned counsel for the respondent further states that the respondent is also a dutiful father and taking care of the children and education is also provided in a better manner to the children



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and therefore, the contentions of the appellant are incorrect.

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10. We have carefully considered the contentions raised on behalf of the appellant and the respondent.

11. Admittedly, a decree of divorce was granted to the appellant and the respondent by way of mutual consent. It is not in dispute that the children are now living with the sister of the respondent. Further, the appellant has not been permitted to visit her children in the house of the sister of the respondent. The O.P. was dismissed mainly on the ground that the appellant has not raised any acceptable grounds for the purpose of granting the relief of custody of minor children. The O.P. Court observed that both father and mother are guardians as far as minor children are concerned till they attain majority. The allegation that the minor daughters are residing in the sister's house of the respondent was not seriously taken note of by the O.P. court. The Court formed an opinion that there are no other adverse allegations against the respondent, and the appellant has not made out any case that the respondent/father is acting against the interest and welfare of the children and that the respondent/father, who is working as Junior Assistant in Tamil Nadu Electricity Board, is an earning member



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and therefore, the appellant/mother is not entitled for the relief of custody.

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12. It is well-settled proposition of law that while deciding a petition filed under Section 25 of The Guardians and Wards Act, the Court has to consider the interest and welfare of the minor child, which is of paramount consideration. The question that arises is what are the parameters to be taken into account to ascertain the interest of the minor children, more specifically, for the purpose of considering the relief of custody. In the present case, the first minor child namely, was born on 06.05.2006 and she is aged about 16 years. She is doing her Plus One course. The second daughter namely, was born on 21.07.2010 and she is aged about 10 years. She is in VII standard. Both of them are studying in a school in Chennai City and capable of understanding the facts and circumstances in a proper manner. They are city bred girls and know what is good and bad for them. The elder one, aged about 16 years, is capable of making an assessment with reference to the conduct of her mother and father in an independent manner. This being the factum, Courts are expected to ascertain the genuinity of interest involved in matters of custody. A deeper enquiry with reference to the state of mind of the children is required. Children at a tender age may have their



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own views and ideas. A girl child aged about 16 years would definitely have a better vision and she would be in a position to place the facts, her wishes and the conduct of her mother as well as the father. Thus, the interest of the minor children has to be ascertained by enquiry. Courts are not expected to grant custody of minor children in a routine manner, merely based on allegations and counter allegations set out in the petition and counter affidavit. Beyond such pleadings, the psychological aspect of the children, the real interest involved and what would be better for their future have to be necessarily considered as the children are the backbone of our great nation. They are the nation builders. A good family alone can create a good nation. Every child has got a right to get better life as enunciated in the Indian Constitution. Right to life includes a decent life and not mere animal life. The life of minor children has to be protected by all concerned. It is the duty of Courts to ensure that minor children are protected and their interests, vision and wishes are preserved to the extent possible to provide them a better future as it is the mandate of the State under the Constitution.

13. The Courts, while dealing with custody petitions under the Guardians and Wards Act, are not expected to decide the matters unlike



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other issues. The issue regarding custody involves sentiments and psychological aspects of children, which have to be dealt with care and caution for providing a better atmosphere, good education and a decent life to minor children. In the present case, we do not find that such examination was done by the O.P. court. Contrarily, the O.P. Court has formed an opinion that the appellant has not made out a valid ground for the purpose providing custody. Probably, the Court formed an opinion that both father and mother are employed and father is also capable of looking after the children. However, the O.P. Court failed to consider the fact that the respondent is not looking after the children, but had left the children in his sister's house and the attention given by father's sister can never be compared and equated to the attention given by either father or mother. The minor children in the present case, undoubtedly, cannot have a good atmosphere in the house of the sister of the respondent/father. When the mother of the minor children is also capable of providing a better and decent living to the children as she is working as a Head Constable in Police Department and drawing a decent salary, there is no reason, whatsoever, to allow the children to be brought up by the sister of the respondent/father.

14. Taking note of these facts and circumstances, we formed an opinion that the children have to be examined. When this Court directed the



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respondent to produce the children before this Court, the respondent was reluctant to produce the children and with great hesitation, he produced the children before this Court. The attitude of the respondent and the manner in which the respondent responded to the Court proceedings are absolutely not upto the mark.

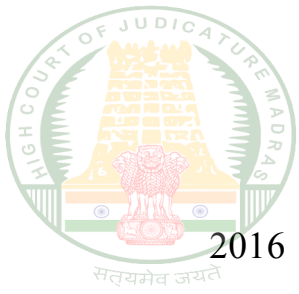
15. The two minor children were produced before us and when they came over to us, they started crying spontaneously. They are grown up city girls and capable of understanding the Court proceedings and they are very well aware of the happenings. They are matured enough to know the conduct of the people around them and decide what is good for their future. The expression of the minor children before this Court was shocking and painful. The elder daughter, aged about 16 years, studying in 11th standard, deposed before us, "Please, donot send us along with our father". The second child, who was also in tears, expressed the same opinion. Throughout the conversation, the children had spoken with tears and the Court comforted them by stating that their interest would be protected and taken care of and encouraged them to come out with their grievance. The elder daughter further deposed that the respondent/father used to pick up quarrels without any reason and they were beaten up till the



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mopsticks were broken. They informed us with tears that frequently, they were beaten up in the house of the respondent's sister. The enquiries made by us revealed that the children are not happy with the respondent and they are not at all willing to reside with the respondent/father. In fact, they are not residing with him, but residing in the house of his sister. The children also made it clear that they are not inclined to go along with the respondent/father. Contrarily, they have expressed their willingness to join with the mother. When the minor children were asked to go to their mother inside the court hall, we could see the happiness and the smile on their faces and also the affection shown by them towards their mother even inside the court hall. Thus, this Court is convinced that the minor children are interested to live with their mother. Moreover, both the children are girl children and being girls, they need certain protection and assistance at the hands of the mother, which may not be possible for the respondent/father. This Court is of the clear opinion that the mother, who is working as a Head Constable in Police Department, is also capable of bringing up the children in a better manner.

16. This Court would prefer to record that the O.P. filed in the year



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2016 was decided in the year 2022, after a lapse of 6 years. In custody petitions, if the minor children are made to suffer for 6 years and if these petitions are prolonged for another 2 years, by which time the minors would attain majority, there is no point in deciding such original petitions under the provisions of Guardians and Wards Act. The custody of the minor children should be decided as expeditiously as possible by the Courts. Keeping these petitions pending for a longer period would definitely cause great prejudice to the interest of the minor children. The delay in deciding such petitions may probably prolong the harassment or trouble, which the minor children are subjected to. Thus, the Courts are bound to decide the custody petitions as early as possible, by ascertaining the interest of the children. The younger generation is wise and they are doubly intelligent. They are capable of assessing human behaviour and conduct. Therefore, decisions cannot be taken by the Courts merely based on certain pleadings, which may be correct or incorrect under certain circumstances. The minor children are left in the lurch and made to suffer in silence due to the indifferent attitude of the parents. When the minor children are left in the lurch by the father and the mother, the minor children have to be enquired and the veracity of the statement made by them has to be assessed in a proper manner to arrive at a conclusion in the interest of the children.

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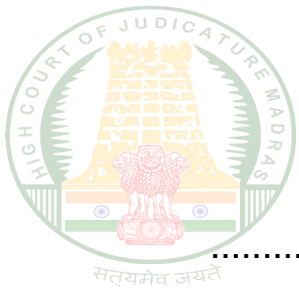


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WEB COPY 17. Besides, either of the parties to the Guardian O.P. petitions seek adjournments to suit their convenience and to achieve their goal. Such adjournments only go to show the conduct of the parties and under no circumstances, such conduct is to be appreciated by the Court. The issue has to be decided taking note of the interest and welfare of the children. The rights of the children have to be protected under all circumstances and the Courts are expected to act swiftly in such cases.

18. In the present case, as stated already, the O.P. was kept pending for 6 years and during these years, the children had to suffer as they were brought up by the respondent's sister. Moreover, all the aspects and issues involved in custody matters were not considered by the O.P. Court and therefore, it necessitated us to examine the children, which we have done and ascertained that the minor children have expressed their willingness spontaneously to join with the mother and on joining with the mother, they were happy and we could ascertain such happiness from the faces of the minor children.

19. Therefore, the custody of two minor children namely, C.



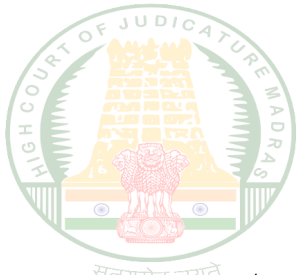
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..... is handed over to the
appellant/mother with immediate effect. The appellant and the respondent

and the two minor children are present before this Court. As we have ascertained the willingness of the minor children, the appellant is directed to take the minor children along with her from this Court itself.

20. The appellant undertakes before us that she will take care of the children in a proper manner and protect their interest and welfare. Therefore, the respondent father is directed to hand over all the certificates, documents and belongings of the children to the appellant/mother today itself. The respondent/father has no right of visitation of the minor children and he shall not interfere with their life or with their activities. In the event of any violation in this regard by the respondent, the appellant/mother is at liberty to approach the jurisdictional Police for all necessary action in the manner known to law.

21. In the result, the order and decretal order dated 08.04.2022 passed in O.P. No. 632 of 2016 is set aside. The Original Side Appeal stands allowed with the above directions. No costs. Connected C.M.P. is closed.



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(S.M.S.J.) (J.S.N.P.J.)

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Index: Yes/~~No~~

Internet: Yes/~~No~~

Speaking Order/
~~Non-speaking order:~~

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AND



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