

**(2009) 08 MAD CK 0043**

**In the Madras High Court**

**Case No :** CRP (PD) No. 383 of 2009 and MP. No. 1 of 2009

J. Finny Jefferson

APPELLANT

Vs

S. Ponsiro Bella, Sam Sobi, Sehari and Saroji Alber

RESPONDENT

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**Date of Decision :** 25-08-2009

**Acts Referred:**

Guardians and Wards Act, 1890 — Section 12

**Citation :** (2009) 08 MAD CK 0043

**Hon'ble Judges :** Aruna Jagadeesan, J

**Bench :** Single Bench

**Advocate :** C.K.M. appaji, for the Appellant; V. Purushothamanm, R1, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Aruna Jagadeesan, J.—This Civil Revision Petition is filed by the petitioner/father against the order passed by the District Judge,

Kanyakumari District at Nagercoil in IA. No. 914/2008 in GW.OP. No. 210/2008 dated 27.1.2009, granting interim custody of the minor child

Carline Finula to the 1st respondent/mother u/s 12 of the Guardian and Wards Act.

2. The 1st respondent/mother of the minor girl child has filed the above said petition for interim custody of the minor child Carline Finula till the

disposal of the main application. The petitioner/father of the minor girl child filed the above said original petition for appointment of guardian to the

minor girl Carline Finula, who is the daughter of the petitioner and the 1st respondent herein. They were living jointly in Nagercoil and thereafter,

misunderstanding arose between them.

3. It is alleged that the petitioner had taken away the minor child on 20.10.2008

from the custody of the 1st respondent while the minor girl child was dropped in the CSI Matriculation School at Vettoornimadam. After the minor child was removed from the custody of the 1st respondent, the education of the child was stopped. The mother of the child has submitted that if the custody of the child be with the father, the petitioner herein, it would be dangerous and highly prejudice to the interest of the minor girl child as well as to the mother of the child. Hence, she has claimed for the interim custody of the minor child.

4. The petitioner in the interim custody petition denied the allegations made against him and would submit that the child is with him, who is now studying in English Medium School under his care and he is the competent person to have the custody of the minor child. He would further submit that considering the safety and better future prospects of the minor child, she should be with him and there is no necessity to give interim custody of the minor girl child to the 1st respondent.

5. Both the parties contested the application before the court below, which directed the petitioner to hand over interim custody of the minor child to the 1st respondent/mother and permitted the petitioner to visit the child on every Sunday at the house of the 1st respondent and to have the custody from 9.00 a.m. to 4.00 p.m. Aggrieved against the said order, this Civil Revision Petition has been filed by the father.

6. Mr. C.K.M. Appaji, the learned Counsel for the petitioner would contend that there is no allegation that the petitioner is acting against the interest of the minor child and it was not proper for the court below to remove the custody of the minor child from the petitioner. According to the learned Counsel, the court below has not given paramount consideration to the welfare of the minor child as the 1st respondent ignored the value of the family life and was living in adultery and further she cannot spare her time as she is employed in the Public Works Department. He would further submit that handing over the interim custody to the mother would lead to discontinuation of the education of the minor child and the minor child's preference was the father and that should be taken into consideration to decide whether the interim custody could be given to the mother of the minor girl child.

7. Per contra, Mr. V. Purushothaman, the learned Counsel for the 1st respondent

would contend that considering the age of the minor child and the present circumstances in which she is placed, it is not possible for the minor child to form any preference and it cannot be taken into consideration by this Court and pointed out that despite the interim custody having been given to the mother by the court below, the petitioner had managed to lift the child, depriving the mother her legitimate right to have the custody of the minor child. He would submit that there is no bona fide in the claim of the petitioner and there is no need to have the interim custody.

8. Normally, the natural guardian should be given preference to have the custody, if he is not found to be unfit and not act against the welfare of the minor child. However, in so far as the interim custody is concerned, in all cases, irrespective of the status of the person, the welfare of the minor child would be paramount consideration. The court shall have regard to the age, sex of the child and, character and capacity of the guardian and his or her nearness to the minor. It is only in exceptional cases, the mother may not have interest of her child most dear to her and there cannot be any second opinion that it is the mother, who would have the interest of the minor most at her tender years, needing the care, protection and guidance of the mother. This is because the feelings at the tender years of a child need a gentle, delicate and kind care by a women that cannot be expressed in so many words and mother would be preferred as against the father. Even considering the sex of the minor child in this case, it is desirable that the minor girl child should be with her mother rather than her father for the healthy growing of the child.

9. In the present case, the minor child is aged about 7 years and at this age, she could be with her mother in order to have a healthy growth of mind and body. In this connection, it may be stated that at this age paramount consideration should also be given to the healthy mental development of the child rather than forming her development in bookish knowledge. Innocent mind of the child should develop with love and affection of her parent, so that she is not brought up with partisan attitude.

10. The petitioner has been constantly making accusation against the 1st respondent of having adulterous contacts with persons whomsoever she comes into contact with and this kind of the attitude of the petitioner, however, he may have love and affection to the minor girl if custody be with

him, will only project the child later as the product of a broken home. The minor girl must carry herself in the society with healthy attitude in life.

Matrimonial dispute between the parents would certainly impair the mind of the child, if she is brought up with partisan attitude influencing her mind

by saying that his mother's character is questionable. Merely because the mother is employed, she cannot be deprived of the custody of the minor

child especially when there is nothing to indicate that she was not taking care of her child when they all lived together.

11. I am not in agreement with the contention of the learned Counsel for the petitioner that minor child's preference was the father, as such

disinclination even if it be is only a temporary phase and it is because of her short separation from her mother. Natural bond of love between the

mother and her child is such that this Court has no doubt that within a short time, if the girl gets the company of the mother, they would develop

intimacy and mutual love and that if the custody is with the mother, the father will not be deprived of showering his love as the court below has

given visitation rights to the father.

12. The court below after considering the facts and circumstances enumerated in the impugned order, has passed the impugned order having in

mind the paramount consideration of the welfare of the child. I do not find any improbability warranting interference with the impugned order.

Hence, the petitioner shall hand over custody of the minor child to the 1st respondent immediately and shall avail the visitation rights as ordered by

the court below. It is made clear that both the parties should not violate the order passed by this Court and if any party violates the order of this

Court, then the other party can approach this Court for appropriate orders.

12. With the above directions, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.