

(2023) 01 KAR CK 0033

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3683 Of 2015 (GW)

K.R. Sujatha

APPELLANT

Vs

B.V. Ravikumar

RESPONDENT

Date of Decision : 20-01-2023

Acts Referred:

Guardian And Wards Act, 1890 — Section 7, 47
Code Of Criminal Procedure, 1973 — Section 125

Citation : (2023) 01 KAR CK 0033

Hon'ble Judges : Alok Aradhe, J;S Vishwajith Shetty, J

Bench : Division Bench

Advocate : M.V. Revanasiddaiah

Final Decision : Dismissed

Judgement

Alok Aradhe J

1. This appeal under Section 47 of the Guardian and Wards Act, 1890 (hereinafter referred to as 'the Act' for short) has been filed against order dated 04.02.2015 passed by the family court, by which petition filed by the appellant under Section 7 of the Act seeking custody of minor ward Sona alias Chiraag has been dismissed.

2. Facts giving rise to filing of this appeal briefly stated are that the marriage between the parties was solemnized on 27.02.2005 in Davanagere. Out of the wedlock, a son viz., Sona alias Chiraag was born on 27.04.2006 . However, on account of differences between the parties, they could not stay together. The appellant filed a petition under Section 125 of the Code of Criminal Procedure claiming maintenance from the respondent. The respondent filed a petition seeking dissolution of marriage, which has been allowed by the family court.

3. The appellant filed a petition under Section 7 of the Act on or about 23.01.2014, in which inter alia it was pleaded that the son is of tender age and requires care and protection of the mother. It was further pleaded that love and

affection, which the appellant can provide to the minor child cannot be given by the respondent. Accordingly, a petition under Section 7 of the Act was filed. The respondent filed statement of objection in which inter alia it was stated that appellant has left the company of the respondent without any justifiable cause. It was averred that son has been admitted to a reputed school in Chikkajagur and is student of III standard. It is also pleaded that child is comfortable in the company of the respondent and he is taking care of the child.

4. The family court on the basis of pleadings of parties framed issues and recorded the evidence. The appellant examined herself, whereas, the respondent examined himself. Both the parties adduced documentary evidence. The family court by an order dated 04.02.2015 has dismissed the petition filed by the appellant. Hence, this appeal.

5. Learned counsel for the appellant submitted that the family court erred in rejecting the application filed by the appellant under Section 7 of the Act and it ought to have appreciated that the appellant is the mother of the child and can take proper care of the child. However, it is fairly admitted by learned counsel for the appellant that the appellant is residing with the father for past about 9 years and the appellant has not filed an application seeking visitation rights either before the family court or before this court.

6. We have considered the submissions made by learned counsel for the appellant and have perused the record. A person while passing an order as to guardianship, the court has to take into account the welfare of the minor, which is of paramount consideration. In the instant case, admittedly, appellant is a house wife and has no source of income and is dependant on the amount of maintenance awarded to her for her livelihood. The respondent was employed as a head constable and has taken voluntary retirement. The respondent stays with his family. The appellant herself in her cross examination has admitted that the family of the respondent is a cultured family.

7. The respondent has taken care of the child and the child is in the custody of the respondent for past about 9 years. The appellant has admitted in her cross examination that she has not gone to the school of the child to enquire about his education. The appellant has also not made any application either before the family court or before this court seeking visitation rights. The interest of the minor would be well served if he is allowed to remain in the custody of his father.

8. The family court on the basis of meticulous appreciation of evidence on record has held that appellant is not entitled to custody of the minor son. The aforesaid finding is based on meticulous appreciation of evidence on record, with which no interference is called for in this appeal.

For the aforementioned reasons, we do not find any merit in this appeal. The same fails and is hereby dismissed.