
(2011) 11 MAD CK 0022
In the Madras High Court
Case No : H.C.P. (MD) No. 998 of 2011

S. Velammal

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0022

Hon'ble Judges : S. Nagamuthu, J;M. Jaichandren, J

Bench : Division Bench

Advocate : N. Dilip Kumar, for the Appellant; A. Ramar, Additional Public Prosecutor for R1 and R2, for the Respondent

Judgement

S. Nagamuthu, J.—The third respondent herein is the father of the children, by names, Karthigaipandi, aged about 10 years and Ganesh Pandi, aged about 7 years. The wife of the third respondent, i.e. the mother of the children, passed away before five years. The petitioner is the maternal grandmother of the children.

According to the petitioner, the children were only in the custody of the petitioner after the demise of their mother. While so, according to the petitioner, on 19.10.2011, the children were taken by force, by the third respondent and they are illegally detained against their wish, by the third respondent. In this regard, the petitioner has preferred a complaint to the police on 22.10.2011. Thereafter, she has come up with the present Habeas Corpus Petition seeking to set at liberty, the minor children, and hand over their custody to her.

2. The learned counsel for the petitioner, while reiterating the allegations made in the complaint, would state that the children are kept by the third respondent against their wish, and having regard to the paramount welfare of the children, the children should be handed over to the custody of the petitioner.

3. But, the counsel for the third respondent would submit that it is true that for some time, after the demise of their mother, there was good relationship

between the petitioner and the third respondent and hence the third respondent allowed the children to be kept in the custody of the petitioner. After some time, since there was misunderstanding between them, the third respondent had taken the children to his custody and he has put them in a local school also. Learned counsel for the third respondent would further submit that the third respondent is taking full care of the children and is educating them. He would further submit that the welfare of the children will be best served if they are in the custody of the third respondent.

4. The learned Additional Public Prosecutor would also make a similar statement like that of the statement made by the learned counsel for the third respondent.

5. We have considered the submissions made on either side. In our considered opinion, since the third respondent is a natural guardian, it cannot be said that the custody of the children in the hands of the third respondent, is illegal. If the petitioner is aggrieved and if she feels that she is entitled to the custody of the children, it is always open to her to approach the appropriate Civil Court for appropriate remedy. This Court, in this HCP, cannot go into the above disputed questions of fact and decide about the rights of the petitioner to have the custody of the children.

6. In such view of the matter, we are inclined only to dismiss the Habeas Corpus Petition, however, with a liberty to the petitioner as well as to the third respondent, to work out their remedies in the appropriate civil forum. Accordingly, the Habeas Corpus Petition is dismissed.

7. At this stage, the learned counsel for the petitioner would submit that at least the petitioner may be given the visiting rights to see the children. The learned counsel for the third respondent would submit that the third respondent has no objection for the petitioner to visit the children in the school, with the permission of the school authorities. The said undertaking is recorded. We make it clear that any of the observations which we have made in this order, shall not influence the mind of the Civil Court, in the event any civil dispute is raised. The Civil Court shall independently decide the issues, in accordance with law on the facts involved.