

(2015) 11 KAR CK 0140
In the Karnataka High Court
Case No : M.F.A. No. 5507 of 2013

Savithramma

APPELLANT

Vs

Gangaraju

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Guardians and Wards Act, 1890 — Section 10

Citation : (2015) 11 KAR CK 0140

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : G.B. Nandish Gowda, Advocate for R.B. Sadasivappa, Advocate, for the Appellant; M. Jai Prakash Reddy, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Waingankar, J.—By judgment dated 08.04.2013, an application under Section 10 of the Guardian and Ward Act filed by the appellant in G & W.C. No. 5/2012 came to be dismissed by the District and Sessions Judge, Chickballapur. Aggrieved by the dismissal of the application, this appeal is preferred by the appellant.

2. The appellant is the mother and the respondent is the father of a minor daughter aged about 5 1/2 years. It is the case of the appellant that she had admitted the child in UKG in S.M.E. Higher Primary School, Dibburhalli. The respondent is the driver working in KSRTC. He neglected the appellant and her minor daughter without any lawful excuse. She filed a petition for maintenance and thereby maintenance was granted at the rate of Rs. 1,500/- per month to the appellant and her daughter. On 29.09.2011, the respondent kidnapped the child from the school. A complaint came to be lodged by the appellant to Dibburhalli police station before whom the respondent gave an undertaking to hand over the custody of the child to the appellant. But he failed to hand over the custody as per the undertaking given by him to the police. As such, she filed an application under Section 10 of the Guardian and Ward Act, for the custody of

the minor child from the custody of the respondent/her husband.

3. Respondent/husband opposed the application. In his reply, though he admitted that the appellant as his legally wedded wife and the child was born out of their wedlock and that he was paying maintenance to the appellant in pursuance of the order passed by the Court, he denied that he kidnapped the child on 29.09.2011 while the child was in the custody of the appellant and that he failed to hand over the custody to the appellant as per the undertaking given by him to the police. It is further contended that it is the respondent who admitted the child to LKG at Evergreen School Manchenahalli. It is also contended that the appellant was pressurizing the respondent to shift the residence to Chikkaballapur, but the respondent did not agree for shifting the house at Chikkaballapur, as his mother who is residing at Dapparthi village, is a diabetic patient and suffering from other ailments. When he refused to shift his residence as desired by the appellant to Chikkaballapur, there was a quarrel between the appellant and the respondent. In the month of September 2010 the appellant left the house all of a sudden with bag and baggages, cash amount of Rs. 30,000/-and the minor child along with her. Thereafter, the respondent along with his mother and relatives approached the appellant and her parents and brought the child back from the custody of the appellant. After about 20 days, while the respondent was on duty and while the child was in the school, the appellant all of a sudden deserted the company of the child and went away along with one Chikkavenkatesh @ Chikkudu S/o. Yarra Avalappa of Jaragahalli village. She was seen in the company of Venkatesh by the police. She did not return inspite of the advice given to her and join the company of the respondent. Instead, she filed a false application for custody of the child. Hence, the respondent sought for dismissal of the application.

4. The application came up for consideration before the District Judge, Chickballapur, before whom the appellant was examined as PW. 1, apart from three other witness as PWs. 2 to 4. Exs. P1 to P8 were marked. The respondent was examined as RW. 1 apart from two other witnesses as RWs. 2 and 3. Exs. R1 to R7 were marked. The learned District Judge upon hearing the submission made by the learned counsel appearing for the parties and on appreciation of evidence has held that the appellant is not entitled for custody of the child which resulted in the dismissal of the application filed by the appellant by the impugned judgment. Hence, this appeal questioning the legality and correctness of the judgment passed by the court below.

5. We have heard the learned counsel appearing for the appellant. Perused the records.

6. Having heard the learned counsel and on perusal of the records, the point that would arise for our consideration is as under:

"Whether the impugned judgment calls for our interference?"

7. On perusal of the material on record, the judgment of the court below and on

hearing the submission made by the learned counsel what emerges is that the relationship between the respondent and appellant as husband and wife is not in dispute. It is also not in dispute that out of their wedlock a daughter was born. When the daughter was running 5 1/2 years, the dispute arose between the husband and wife. It is evident from the material on record that the wife deserted the company of the husband and started residing with one Venkatesh. It is also evident that the child was taken by the respondent husband who is working as driver in KSRTC. The child is being looked after by the respondent and his mother. It is also evident that the respondent is having source of income to maintain the child and to look after her education and welfare, whereas the appellant/the mother has no income of her own. She is getting maintenance at the rate of Rs. 1,500/- per month from the husband. Therefore, it goes without saying that she has no capacity to maintain her minor daughter, to look after her education and the welfare. In a case of this nature, the paramount consideration should be the welfare of the minor. The child has been residing with the respondent/father since more than three to four years. Her age appears to be 9 to 10 years. The appellant/mother is residing in the company of one Venkatesh. Under such circumstances, handing over the custody of female child aged about 9 to 10 years to the appellant is not advisable. Chances of spoiling her career cannot be ruled out. Moreover, it is seen from the judgment that the child was independently enquired by the District Judge in his chamber. During his enquiry, it transpired that the child was not willing to go with her mother/the appellant. Taking into consideration all these aspects, the learned District Judge arrived at a conclusion that the appellant is not entitled for custody of minor daughter. On re-appreciation of evidence, we are of the considered opinion that it is in the larger interest of the welfare of the child that the custody should be with the respondent/father. Accordingly, the appeal filed by the appellant is dismissed as devoid of merits.