

(2013) 11 KAR CK 0079
In the Karnataka High Court
Case No : M.F.A. No. 9294 of 2013 (GW)

Sri. M.S. Nataraj

APPELLANT

Vs

Smt. Mayamma

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Guardian and Wards Act, 1890 — Section 25, 47, 7

Citation : (2013) 11 KAR CK 0079

Hon'ble Judges : K.L. Manjunath, J;A.V. Chandrashekara, J

Bench : Division Bench

Advocate : P. Raghunandan M.G. and Siddanokoru Vishwanatha for V.R.K. Associates, for the Appellant;

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—This is an appeal filed u/s 47 of Guardians and Wards Act, 1980, challenging the final order passed by the learned Senior Civil Judge & JMFC, Hunsur, in Case No. G & W No. 3/2001 dated 19.10.2013 insofar as it relates to the visitation rights given to the respondent herein. The appellant was respondent in the Trial Court and respondent was the petitioner in the Trial Court. Parties will be referred to as the petitioner and respondent as per their status in the Trial Court.

2. The petitioner had filed an application under 7 and Section 25 of the Guardians and Wards Act seeking custody of her grandchild Kum. Pavana till she attained majority. Petitioner is the mother-in-law of the appellant herein. The marriage of the respondent with the petitioner's daughter Nethra @ Nethra had been solemnized on 04.06.2006 according to the customs of the parties. As a result of the legal wedlock, Nethra @ Manjula gave birth to a female child on 05.10.2007. Subsequently, she died due to cancer. The custody of the female child is with the petitioner from 09.04.2011, the date on which her daughter Manjula died. A legal notice was got issued on 28.05.2011 by the petitioner expressing her intention to take custody and look after the child till she attained

majority. The respondent did not respond to the notice and hence she chose to file a petition seeking custody of the child.

3. The said petition came to be objected to by the respondent in the form of detailed objections. He had taken up a specific plea that being the father he would look after the child with all care and love and that the interest of the child would be well protected if she continues to stay with him.

4. Mayamma came to be examined as PW1 and two witnesses have been examined on her behalf. The respondent has been examined as RW1.

5. On going through the records and hearing the arguments, the learned Judge has dismissed the petition, but visitation rights have been given to the petitioner-respondent herein permitting her to take custody of the minor child Kum. Pavana @ Havana once in a month preferably on Sunday or festival day from morning till evening and to send her back to the house of respondent on the same day. She has been further permitted to take the custody of the minor child for a period of one week during Summer Vacation and for a period of three days during Winter Vacation. The said period of visitation will have to be fixed by the petitioner-Mayamma after due intimation to the respondent. It is this order of granting visitation rights which is called in question on various grounds as urged in the appeal memo.

6. We have heard the learned Counsel for the appellant regarding admission.

7. After going through the records and arguments, the following points arise for our consideration:

Whether there are any good grounds to interfere with the order passed by the learned Senior Civil Judge, Hunsur in G & W No. 3/2011 dated 19.10.2013 insofar as it relates to the visitation rights granted to Mayamma-respondent herein so as to admit this appeal?

Reasons:

8. The child was born on 05.10.2007. Nethra @ Manjula died of liver cancer on 09.04.2011. While considering the aspect of custody of minor child, it is the duty of any Court to look into the welfare of the minor child and that would be the paramount consideration. It is not the rights of the parties or relatives which is relevant. The word "welfare" used in Section 13 has to be construed liberally and must be given as far as wider meaning. This has been made clear in the case of Gourav Nagpal Vs. Sumedha Nagpa reported in 2009(1) CCC 031 (SC).

9. In the light of the said principles reiterated by the Hon"ble Supreme Court, the learned Judge has evaluated the evidence placed before the Court. Admittedly,, the marriage is not in dispute. The child has been in the custody of the appellant ever since her birth. Though Mayamma came to be examined as PW1, her evidence has been eschewed on a memo filed on her behalf to that effect. PW2 has deposed that Mayamma has high Blood Pressure and has deficit white blood

corpuscles. From her evidence it appears that Mayamma does not have good health and as such she will not be in a position to effectively look after the child. Any how, the marital relationship between the appellant and his wife was cordial till her death. The appellant is having sufficient means to attend to the requirements of the child and the child has been living adjusting to the family circumstances of the appellant herein. The child is already aged about six years. She requires love and affection of the father and his family members as she has lost her mother at a tender age.

10. Any how, the respondent herein and their family members have been visiting the house of the appellant to see the minor child. On analyzing the evidence the learned Judge has come to the conclusion that the appellant has adequate income to look after his family and to attend to the requirement of the child. The evidence of PW3 is only hearsay.

11. The appellant has been examined as RW1. He does not have any vices and though he was an accused in a murder case in S.C. No. 305/2000 on the file of III Addl. Sessions Judge, Mysore. Anyhow he has been acquitted of all the charges leveled against him in the criminal cases. The child has already been admitted to Cambridge School at Hunsur and she is studying in U.K.G. The appellant is the natural father and has good financial condition and is able to look after the child.

12. Apart from this, the child had been brought to the Court on 20.01.2012, 29.09.2012 and 02.08.2013. On looking to the child and interacting with the child, the learned Judge has come to the conclusion that the child is healthy and comfortable in her parental home. The decision arrived at by the Trial Court that the interest of the child is more secure in the house of the parent and therefore, the application seeking custody of the child has been dismissed.

13. Keeping in mind that the respondent herein is the maternal grandmother of the child and that she must be given an opportunity to see her grand daughter occasionally in the light of the death of her daughter, visitation rights have been given. If the visitation rights had not been given while dismissing the petition filed under Sections 7 and 25 of the Guardians and Wards Act, it would have been something different. Visitation rights so granted is a limited one. Nobody can find fault with such a visitation right under which the respondent herein will have an opportunity to see her grandchild atleast once in a month on any Sunday or festival days from morning till evening, one week during Summer Vacation and three days during Winter Vacation and this will help the grandmother and child to develop affinity with each other. Therefore, we do not find any reason to interfere with the well-reasoned order passed by the learned Judge in the matter of granting visitation rights. Hence the case on hand is not fit to be admitted.

ORDER

Appeal is dismissed and the order of the learned Judge passed in G & W C No.

3/2011 on the file of the Senior Civil Judge & JMFC, Hunsur is affirmed. No costs.