

(2012) 06 MAD CK 0084

In the Madras High Court

Case No : Writ Petition No. 14466 of 2012 and M.P. No's. 1 and 2 of 2012

T. Chandravadhana

APPELLANT

Vs

K. Srinivasan

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 13
Constitution of India, 1950 — Article 227
Guardians and Wards Act, 1890 — Section 25, 3
Hindu Marriage Act, 1955 — Section 13(1)(ia)

Citation : (2012) 06 MAD CK 0084

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T.P. Kathiravan, for the Appellant;

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has filed the present writ petition seeking to call for the records in application No. 1841 of 2012 in O.P.No. 388 of 2011, dated

26.4.2012 pending on the file of the Original Side of this court and after setting aside the same, seeks for the return of O.P.No. 388 of 2011 to the

respondent so as to present it before the appropriate court. The petitioner is the wife and the respondent is the husband. The respondent filed

O.P.No. 388 of 2011 before this court u/s 25 of the Guardian and Wards Act read with Order 21 Rule 13 of the O.S. Rules. The respondent had

prayed for a permanent custody of the minor child S. Krishnavareshini, born on 25.09.2005. The said O.P. was registered as O.P.No. 388 of

2011 and notice was ordered to the petitioner. The petitioner filed a counter statement dated Nil (July, 2011). It was stated by the petitioner that

she was not a permanent resident of Chennai. If at all, a petition ought to have been filed only before the District Court, Namakkal and not before

the Original Side of this court. Apart from the merits of the case, she made several allegations including that the respondent was attempting to take

the child outside India. She had also stated that there was no cause of action for filing the O.P.

2. In the application No. 2940 of 2011, she also filed a counter affidavit, dated 18.7.2011. This court by an order dated 20.7.2011, in paragraphs

10 and 11, had ordered as follows :

10. It was brought to the notice of the Court during the arguments advanced by learned counsel for both the parties, the child is continuing her

studies at Tiruchengode. She would also reply that she is studying 1 Standard "B" section in Tiruchengode School. Therefore, I would consider

that the present custody of the child with the respondent /mother need not be disturbed in order to grant the interim custody to the applicant.

11. As far as the visitation right of the respondent is concerned, the applicant being a father of the child has to necessarily bestow fatherly affection

towards the minor child. However, when I saw the child during the interview she was very much scared. Therefore, the question of granting

weekend custody in favour of the applicant to take the child from Tiruchengode to Bhuvagiri for spending the weekend with the child, cannot be

possible. However, the applicant is always entitled to visit the child during the weekends at the residence of respondent's parental home to spend a

day on Sunday after giving notice to the counsel on record for the respondent in advance. On such giving of notice, the respondent and the other

family members of parental house shall give permission to the applicant to visit the child and spend a day with the child.

3. Therefore, by an order dated 20.7.2011, the application filed by the respondent was dismissed. But he was given permission to visit the child

after giving due notice to the petitioner. After this order dated 20.7.2011 was passed, there has been exchange of legal notices between the parties

including a complaint to the police station. The petitioner also filed an application u/s 13(1)(i-a) of the Hindu Marriage Act before the Principal

Subordinate Judge, Cuddalore in HMOP No. 152 of 2011 for dissolution of the marriage between the parties on the ground of cruelty.

4. As against the order passed by this court dated 20.7.2011, the respondent had preferred an OSA being OSA No. 292 of 2011. The said OSA

came to be disposed of by an order dated 23.09.2011. Subsequently, a contempt petition was filed by the respondent in Contempt Petition No.

1915 of 2011. In the contempt petition, this court by an order dated 09.02.2012, had ordered as follows :

2. Learned counsel for the petitioner has submitted that inspite of petitioner going to the temple as per the order of the Court, the child was not

handed over and under the guise as if the child is not willing to go, the child was not handed over to the petitioner. Respondent who is present in

the court would state that the child was reluctant to go to the petitioner-father, however, she has stated that she would comply with the order of the

Court dated 23.09.2011 in O.S.A.No. 292 of 2011. Child-Krishnavarshini is aged 7 years old.

3. Considering the submission, Respondent is to persuade the child and comply with the order of the Court dated 23.09.2011 made in O.S.A.No.

292 of 2011.

4. The matter shall be listed on 22.02.2012.

5. In the contempt petition, a further order was also passed on 22.02.2012. In the meanwhile, the respondent filed an application No. 1841 of

2012 demanding an interim custody of the minor child Krishnavarshini from the petitioner during summer vacation from 12.4.2012 to 10.6.2012.

The petitioner filed a counter affidavit, dated 18.4.2012. In paragraph 21 of the counter, she had averred as follows :

21. I submit that if the petitioner is really interested in the final disposal of the above OP, I am ready and willing to cooperate for the final disposal

of the case by any time this Hon"ble Court may deem fit and proper. To prove my bonafide to have the Final disposal of the O.P. I have filed my

counter in the main O.P on the very first hearing. On the other hand the petitioner is not at all interested in the Final disposal of the main O.P but

only interested in harassing me otherwise, as he knows that he cannot succeed in the main O.P.

6. Subsequently, in the application No. 1841 of 2012, this court had passed an order on 26.4.2012 and in paragraph 9, this court had ordered as

follows:

9. In view of the above, this Court passes the following order :

(i) The respondent/wife shall hand over the custody of the minor girl S. Krishnavareshini on 1st May, 2012 at 9.00 AM to the respondent.

(ii) The applicant shall have the custody of the child from 1st May, 2012 till 31st May, 2012.

(iii) The applicant shall hand over the custody of the minor child to the respondent at 5.00 PM on 31st May, 2012.

(iv) Both parties shall not violate any of the clauses in the said order.

Accordingly, the application is disposed of.

7. As against the same, the petitioner preferred an OSA in OSA No. 190 of 2012. The division bench by an order dated 3.5.2012 had passed the following order:

5. Considering the facts and circumstances of the case, we find no reason to interfere with the reasoned order passed by the learned Judge.

Accordingly, this Original Side Appeal is dismissed with a direction to the appellant herein to comply with the order passed by the learned Single

Judge dated 26.04.2012 immediately. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

8. It was thereafter, the petitioner had issued a legal notice to the respondent and also gave a criminal complaint before the Tiruchengode Town

Police station against the respondent. It must be noted that the O.P is yet to be disposed of. The petitioner also made a statement as noted above

that she was willing to cooperate with the trial of the O.P. However, on an ill-advice, she has now come forward to file the present writ petition

seeking for a direction from this court exercising writ jurisdiction to the Original Side of the very same court asking for return of the OP filed by the

respondent. It is not clear as to how such a writ petition is maintainable. The contentions raised by the petitioner were as follows :

The petitioner and her minor child are permanently residing at No. 64, SNO Road, Thiruchdngodu, Namakkal (see petitioner community

certificate " P.4, Minor child school Fees Receipt P.44 & 45 and Correspondent between petitioner and respondent P.46 to 54 of typed set page

119 to 129). But respondent has wrongly shown petitioner address at Madras for two purpose of invoking Madras High Court jurisdiction to file

O.P.No. 388 of 2011 under Sec.25 of GW Act and impugned order for interim

custody ordered inspite of serious objection in counter in Appln.

No. 2940 of 2011 and O.P.No. 388 of 2011 and Appln.No. 1841 of 2012 in (P-81 para 5, 17, 22, Page 185 " para 19. So the present writ

petition is maintainable under Art.227 of the Constitution of India " to quash the said impugned order as objection to jurisdiction was seriously

raised in counter and order were passed in to light of decision reported AIR 2005 " Uttaranchal I Vs Smt. Sushma Agarwal in minor Agarwal so,

the petitioner may be posted for before Hon"ble Judge immediately for order as the petitioner is unable to contact after her child over phone from

9.5.12 after she was forcibly kidnapped by the respondent even thro District Superintendent of Police, Namakkal and thus render justice.

9. It must be noted that the jurisdiction of the High Court under the Guardians and Wards Act is conferred under the Guardians and Wards Act

read with Clause 17 of the Letters Patent. The scope of the jurisdiction of this court under the Guardians and Wards Act came to be considered

extensively in a judgment of this Court in Amarnath K. Vs. Vardhini Amarnath reported in 2009 (6) MLJ 936. In that case, this court had noted in

paragraphs 23 and 24 as follows :

23. Though the power of this Court under the Letters Patent more particularly Clause 17, is saved by Section 3 of the GAWA, one has to give full

meaning to both provisions. Section 3 of the GAWA reads as follows:

3. Saving of jurisdiction of Courts of Wards and Chartered High Courts. - This Act shall be read subject to every enactment heretofore or

hereafter passed relating to any Court of Wards by any competent legislature, authority or person in any State to which this Act extends; and

nothing in this Act shall be construed to affect, or in any way derogate from the jurisdiction or authority of any Court of Wards, or to take away

any power possessed by any High Court.

(Emphasis added)

24. Therefore, in cases where the cause of action arose either in the Presidency Town or within the Madras Presidency, this Court gets jurisdiction

in terms of Clause 17. Obviously, the Union Territory of Puducherry was not part of the Madras Presidency. Admittedly, the respondent lives in

Karaikal, which is a part of the Union Territory of Puducherry. The Union Territory of Puducherry came to be merged with the Indian Union only

from the year 1959.

10. Even the term ""ordinarily resides"" came to be considered in paragraph 29 of the judgment, which reads as follows :

29. The term ""ordinarily resides"" has been considered by the court. The question of residence is largely a question of intention. In the case of minors no question of intention arises. But the Court will take into consideration their actual place of residence at time of the application and regard that as their ordinary place of residence.

11. The petitioner and the respondents had several rounds of litigation and had clogged this court with various petitions. They have also taken the matter thrice to the division bench, two by way of OSA and one by way of contempt. If the petitioner is not satisfied with the order of the division bench made in the OSA, she should have taken the matter to the Supreme Court and cannot file the writ petition, which is thoroughly misconceived and clearly an abuse of process of the court.

12. The question of this court issuing writ to the very same court will not arise especially when there is no want of jurisdiction on the side of the Original Side in entertaining the O.P. Even otherwise, the petitioner herself in one of her affidavit had stated that she is willing to get along with the OP and it is the respondent who is delaying the matter. If that is so, she should take steps to get the OP disposed of by the Original Side and not to file the writ petition. This court is not satisfied with the contentions raised by the petitioner and such a writ petition is not maintainable. If at all the petitioner has any grievance relating to locus standi, it is for her to raise her objection before the Original Side of this court and seek for an appropriate relief. In view of the above, the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.