

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2012

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

Original Petition No.586 of 2006

In the matter Guardian and Wards Act 1890
and

In the matter of 1.Sethana Jagadiswari
(Female) and 2.Sethan Annamalai (Male)minors

1.M.Ramachandran

2.Pitchammal

... Petitioners

Vs.

Arun Maharajan

... Respondent

This petition is filed under Sections 3 and 7 to 10 of the Guardian and Wards Act, 1890 to appoint the petitioners as the guardian of the persons and property of the minors Sethana Jagadiswari born on 18.10.2002 and Sethan Annamalai born on 10.6.2004 and to grant custody of the minors to the petitioners from the respondent.

For Petitioners : Mr.K.Perumal

For Respondent : Mr.S.Haja Mohideen Gisthi

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ORDER

This original petition is filed by two petitioners who were grand parents of the minor female child Sethana Jagadiswari and minor male child Sethan Annamalai seeking for appointing them as guardians of persons and property of

minors and for the grant of custody of the minor children to the petitioners from the respondent.

2.The O.P was admitted on 23.8.2006. Since the respondent was evading service, this court directed notice to be served through Inspector of Police, H3 Police Station, Thondaiarpur, vide order dated 15.6.2009. The petitioner filed an application in A.No.216 of 2007 seeking for an interim custody of the minor children. This court found that the children are already studying in Chennai and that the petitioners are from Thoothukudi District. Therefore, it will not be in the interest of the children to grant an interim custody pending final orders. But, however the petitioners were given visitation right during quarterly, half yearly vacations as well as during summer vacations. The respondent has filed a counter affidavit, dated 3.7.2009 in the main O.P. Subsequently, the matter was directed to be posted before the learned Master for recording evidence. The first petitioner examined himself as P.W.1 and the respondent examined himself as R.W.1. Subsequently, the matter came to be posted before this court by an order of the learned Master vide order dated 16.11.2011. When the matter came up before this court on 27.09.2012, this court directed the production of both minor children in the Chambers on 05.10.2012. However the children were produced on 08.10.2012 in the Chambers and that the court had an interaction with the minor children.

3.The case of the petitioner was that they are grand parents of the minor children. The minor girl was born on 18.10.2002 (10 years at present) and the minor boy was born on 10.6.2004 (8 years at present). The minors are ordinarily residing in Chennai with the respondent. Their daughter Krishnakumari was married to the respondent on 25.5.2001 as per the Hindu rites and customs. Their daughter was harassed by the respondent seeking for additional dowry. She was killed on 17.09.2005 and a FIR was registered in Crime No.1690 of 2005 on the basis of the report given by the house owner. An enquiry was conducted by the Tahsildar and Executive Magistrate, Fort and Tondiarpet Taluk. They had given their statements. The FIR was altered to cover Sections 498A and 304B IPC. The case is pending before the Mahila Court, Chennai in S.C.No.277 of 2006. They have also given evidence in the criminal case. The ornaments, house hold articles and furnitures given at the time of marriage of their daughter were not returned by the respondent. There is all possibilities for the respondent using the properties of their daughter leaving the minors in lurch. Since the respondent is the main accused in the case and was responsible for the death, the minor children cannot be left in the custody of the respondent. As the maternal grand parents, they will look after the welfare of the minor children. They are also having another son and daughter, who were married and are

living separately. They have no further commitments. Therefore they undertake to look after the welfare and education of the children without any expectations. The first petitioner was a Government servant and the second petitioner was a teacher. They have now retired and are drawing pension. Their income is Rs.20,000/- per month as a pension.

4. In the counter affidavit, it was stated that the respondent has great love and affection for the minor children and is providing them good education and environment. His children are studying in a Convent School and are affectionate towards the respondent. The respondent is working as an Accountant in a private firm. He had taken insurance policies in the name of the minors. He was falsely implicated in the criminal case. It is only because of the death of their daughter, they are making false allegations against the respondent. The paramount consideration is the welfare of the minors. The respondent alone will be able to take care of the minors. The respondent has not married again. He also stated in cross examination that the children do not even know the fact of the petitioners. In case anything comes out of the criminal case, his brother's family will take care of the children. He has sufficiently provided for the future of the children.

Mr.Haja Mohideen Gisthi, learned counsel for the respondent that the criminal case registered against the respondent in S.C.No.277 of 2006 has been stayed by this court in CrI.M.P.No.1 of 2011 in CrI.O.P.No.17714 of 2011 vide order dated 4.8.2011 and is still pending.

6.The two children who are 10 years and 8 years respectively produced before this court have told in an unmistakable terms that they love their father and are happily staying with him. The children are studying in Little Flower School and are having good academic records. They are happily living with the respondent and his family. They should not be disturbed at this age.

7.Even though this court by an interim order had permitted the petitioners to have visitation right, it is admitted that they have not visited the children so far. The case against the respondent is still pending. They have also given deposition that the children are also unable to immediately recognise their grand parents.

8.Under these circumstances, since the respondent has not been disqualified or has not suffered from any conviction in the criminal case, it will not be proper to divorce the respondent from the custody of the children especially when he is a natural guardian under law. The children are also developing good bond with the respondent and have not shown any discomfort in staying with the respondent's house. This court is satisfied that

the present arrangement of the respondent having the custody of the children must continue. Even the respondent in his deposition stated that he has no objection for the children be visited by their grand parents, i.e., the petitioners. Under these circumstances, this original petition will stand dismissed with the above directions. However the petitioners are entitled to have an interim custody of the children during summer vacation of the school in which two minor children are studying, for a period of one week. They are also at liberty to take the children to their place of abode and bring back the children safely to the custody of the respondent.

sd/.K.C.J
31.10.2012

//Certified to be a true copy//

Dated this the day of 2013.

R.s/15.04.2013

COURT OFFICER

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