



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JANUARY, 2024

PRESENT

THE HON'BLE DR. JUSTICE H.B.PRABHAKARA SASTRY

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

MISCELLANEOUS FIRST APPEAL NO. 7082 OF 2023 (GW)

Between:

...Appellant

(By Smt. Rashmi George, Advocate)

And:



...Respondent

(By Smt. Nethravathi K., Advocate)



This Miscellaneous First Appeal is filed under Section 47 of the Guardians and Wards Act, 1890, praying to set aside the impugned order dated 07-09-2023 passed in G & W.C. No.34/2022 in I.A.No.1, by the Court of the Principal Senior Civil Judge, Bengaluru Rural at Bengaluru, by allowing this appeal, pass such other orders that this Court deems fit to grant in the facts and circumstances of the case, in the interest of justice and equity.

This Miscellaneous First Appeal coming on for Final Hearing, through Physical Hearing/Video Conferencing, this day, **Dr.H.B.Prabhakara Sastry J.** delivered the following:

J U D G M E N T

The present petitioner, as a mother of the baby girl by name *****h (hereinafter for brevity referred to as "Renee"), said to be aged 3 ½ years, has filed this appeal, challenging the order passed by the Court of the Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru (hereinafter for brevity referred to as the "the Trial Court") dated 07-09-2023 on I.A.No.1 in G and WC.No.34/2022, allowing the said I.A. filed under Section 25 (1) of the Guardians and Wards Act, 1890, (hereinafter for brevity referred to as "the G & WC Act") by the present respondent, who is the father of the said baby Renee, where under the Trial Court, while allowing



his application had held that the applicant/respondent was entitled for the custody of the minor child *****and the appellant was directed to handover the custody of the child to the custody of the respondent/father from 10:00 a.m. to 4:00 p.m. on every Saturdays and Sundays, who shall, in turn, handover the custody of the baby *****back to the appellant's custody before 5:00 p.m.

2. The contention of the appellant as well the argument of the learned counsel for the appellant is that, the child *****was born to the appellant, seven y after the marriage and the child is greatly attached to her mother. Due to the differences between the parties, the appellant and the respondent are living separately since about two years.

It is the major contention of the learned counsel for the appellant, as canvassed in her argument that, the custody of the child from 10:00 a.m. to 4:00 p.m. for two days in a week would amount to handing over the



permanent custody of the child to the respondent and that the appellant apprehends that the respondent may run away with the child or kidnap the child.

It is also the submission of the learned counsel for the appellant that the present appellant has also filed a petition for dissolution of her marriage with the respondent, in the year 2022 and the same is pending. Under the said circumstance, the impugned order ought not to have been passed by the Trial Court. However, while concluding her submission, the learned counsel for the appellant submitted that, if the visitation right is modified and confined to a single day in a week, that too under the supervision of the appellant/mother of the child, probably, the appellant may not have any objection for the same.

3. Per contra, the learned counsel for the respondent/father in her brief argument submitted that, admittedly, the parties to the appeal are the natural parents and guardians of the child *****and that being



the case, the child which is only 3 ½ years old should not be deprived of the love and affection by her father. As such, in the interest of the welfare of the child, the father should have a right to the custody, at least during day time of the child, which was rightly considered by the Trial Court in its impugned order, as such, the same does not warrant any interference at the hands of this Court.

4. After hearing the learned counsels for the parties, the only point that arise for our consideration in this appeal is:

Whether the impugned order under consideration warrants any interference at the hands of this Court?

5. It is an admitted fact that the marriage between the parties herein was solemnised on the date 31-05-2012 and out of the said wedlock, a girl child was born on the date 09-04-2019 and it was named as '*****Dominic Joseph', as such, as on the date, the age of the child would be four years and eight months. According to the



learned counsels for the parties, the child is now going to the School and has got five days a week as the School working days. It is also submitted from both side that the mother of the child, who is the appellant herein, is a medical Doctor by profession and the respondent, who is the father of the child, is a software Engineer. The present appellant, as a mother of the child, has filed a petition under Section 7(1)(a) and (b) and Section 17 of the G and WC Act, before the Trial Court, which is pending in G & WC No.34/2022, seeking the relief of declaration and appointing the petitioner therein (appellant herein) as the natural guardian and for granting permanent custody of the child '*****h' to the petitioner and of the child having the complete, physical and legal custody.

6. During the pendency of the said petition, the respondent therein, who is the present respondent, has filed an interlocutory application - I.A. No.1, under Section 25 (1) of the G and WC Act, in the Trial Court. The said



I.A. came to be allowed by the order dated 07-09-2023, giving the custodial right of the child *****to the present respondent (father), twice a week i.e. on every Saturday and Sunday from 10:00 a.m. to 4:00 p.m.

7. Admittedly, baby *****is only four years and eight months old, as on the date. Even according to the parties to the litigation, the parents of the child are living separately since about two years and a petition for dissolution of the marriage between them is also said to be pending. No doubt, for such a young age of the child, the mother would be a good care-taker, however, the role of the father of the child with respect to his offspring, particularly of a minor child, cannot be ignored.

8. The allegation of the present appellant in the Trial Court that the respondent was finding fault with her in everything she does and used to pick fights and that medically also, he has very weak *libido* etc. are all the subject matter of trial. However, those allegations should not come in the way of the parents giving their love and



affection to their child and building a better future for it. In the dispute between the father and the mother, the child should not suffer. The child of the age group of the baby like Renee, which is of a very tender age, requires the love and affection, protection and company of both the parents, i.e. father and the mother. When the father and the mother, both are alive, depriving a child of its entitlement to have the love and affection of its parents i.e. both father and the mother would not be a justice that is being done to the child.

9. Admittedly, except a bare apprehension of the appellant that in case if the respondent (father) is given with the custody of the child *****during day time only at the weekends would result in he either kidnapping or running away with the child, is with no corroborative material and it is only an apprehension which probably the appellant has assumed by herself. At this juncture, what is to be noticed here is that, the Trial Court, in its impugned order, has not granted the custody of the child



to the respondent either for the whole day, i.e. round the clock or evening or night hours. It is only for two days in a week during day time, that too, from 10:00 a.m to 4:00 p.m., the interim custody of the child is ordered to be given by the appellant to the respondent. Under the said circumstance, the apprehension of the appellant that the said custody would become a permanent custody or that the respondent (father) would run away with the child would find no basis to believe. No materials are placed to show that any such attempt was previously made by the respondent or that the respondent has any such preparation or motive to commit any such alleged act against the child. Under the said circumstance, mere assumption and presumption of a party to the litigation cannot acquire the place of fact. On the contrary, for the grievance between the parents, the child shall not be a prey for it and cannot be made to suffer.

10. Finally, so far as the submission of the learned counsel for the appellant about restricting or confining the



visiting right only for a day, that too, under the supervision of the mother is concerned, under the present circumstances, as could be made out by the parties before the Court, at this juncture, we do not find any such necessity or reason that the custody of the child is to be restricted to only one day, that too, to be always under the supervision and within the vision of her mother. Being the parents and natural guardians of the child, the husband and wife both should repose confidence *inter se* and should have trust between themselves. It is that relationship built upon trust and love and affection only would give a full-fledged love and affection and sense of protection to the child like baby *****in the instant case.

As such, in the absence of any material to suspect any adverse happening in case if the custody of the child is entrusted to the respondent/father of the child for two days, during day time, i.e. from 10:00 a.m. to 4:00 p.m. on every Saturday and Sunday, we do not find any reason to modify the impugned order passed by the Trial Court, even to the extent of confining the said visitation right for



one day, that too, under the supervision and vision of the mother. Hence, we do not find any reason to interfere in the impugned order.

Accordingly, we proceed to pass the following:

ORDER

The appeal stands dismissed as devoid of merit.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

BMV*
List No.: 1 SI No.: 51