

Santhanalakshmi Vs. S. Murugesan

Santhanalakshmi Vs. S. Murugesan

SooperKanoon Citation : sooperkanoon.com/778921

Court : Chennai

Decided On : May-17-1994

Reported in : AIR1995Mad244

Judge : Rengasamy, J.

Acts : Guardian's and Wards Act, 1890 - Sections 3, 7, 10, and 25; [Code of Criminal Procedure \(CrPC\)](#) , 1973 - Sections 125

Appeal No. : Original Petition No. 180 of 1990 and Appln. No. 3368 of 1993

Appellant : Santhanalakshmi

Respondent : S. Murugesan

Advocate for Def. : S.K. Sundaram, Adv.

Advocate for Pet/Ap. : A.S. Narasimhan, Adv.

Judgement :

ORDER

1. This petition is filed under Sections 3, 7 to 10 and 25 of the Guardians and Wards Act.
2. The petitioner is the mother of the minor boy Karthik alias Karthigeyan aged about 8 years. The petitioner married the respondent in the year 1981 and the minor boy Karlhik alias Karthigeyan was born to them on 2-1-1983. The petitioner

has alleged hercunder. She the petitioner had been to her parents house in January 1986 and returned to her matrimonial house with certain new clothes and house-hold articles presented to her by her parents. But the respondent, who developed allergic to his in-laws, directed the petitioner to return all materials to her parents. This resulted in a quarrel between them and the respondent beat the petitioner, who had to return to her parents' house. The respondent a few days later, came to the petitioner's house and tried to take away the minor boy Karthik along with him but at the intervention of the neighbours, the child was retrieved to the petitioner. The child was admitted in Sri Sankara Senior Secondary School, Adyar in 1986-88. The respondent filed a Habeas Corpus petition W. P. No. 1499, 86 for the custody of the child but the same was dismissed on 8-4-1986. The petitioner filed M.C. No. 32 of 1986 on the file of the Metropolitan Magistrate's Court. Saidapet, under Section 125 of the Code of Criminal Procedure, for maintenance. The respondent, to avoid the liability of paying maintenance, made unfounded allegations, including adultery, against the petitioner. During that time, the respondent suggested for. the admission of the child in Brindavan School, Attur, Chengleput District, a residential school, and also offered to take the petitioner with him. Therefore, the petitioner filed before the Metropolitan Magistrate for maintenance, was not pursued by the petitioner and she also joined the respondent. The child Karlhik was admitted in Brindavan School, Attur, but the respondent made a false complaint to the poliee against the petitioner alleging that she threatened to poison the respondent and the child. The police also unnecessarily harassed her.

The respondent filed O.P. No. 192/87 on the file of this Court seeking custody of the minor child. That petitioner was dismissed permitting the petitioner to bring up the child in Brindavan School. After the disposal of that petition as the respondent admitted the boy in Brindavan School as father, he informed the school authorities that he alone is entitled to the custody of the child. Therefore, during the vacation time, the respondent is taking the boy with him. The child Karthik is very much attached to his mother and he has also written letters to his friends. The petitioner is alone and her parents are living in Manamai Village in Chengal-Anna District. The petitioner being the mother is entitled to be the guardian of her minor son. As the respondent had clandestinely removed the minor child from her custody and

the welfare of the minor will be very much improved if he is placed in the custody of the mother, the petitioner has filed this petition to appoint her as the guardian of the minor and also for giving custody of the child to her from the respondent, who is a very arrogant, harsh and rigid person. Hence this petition.

3. The respondent has filed counter with the following contentions :

The petitioner, without the knowledge and consent of the respondent, had left the matrimonial house with all the house-hold articles. When this was questioned, now a colour is given that the respondent objected for receiving the dress and other articles from her parents. Petitioner's father, who is working in Electricity Board office, is a drunkard and he is also a man of bad character. The minor boy Karthik was admitted by the respondent in a good convent in 1986 but the petitioner had deliberately taken away this child without considering the welfare of the child, to her father's house situated in a slum lacking even the basic amenities and that area also is known for selling arrack and a harbouring place of criminals, in the southern part of Madras and therefore the minor boy cannot be placed in that area where the petitioner is living. The brothers of the petitioner are uneducated and the future of the boy will be very much affected if he is placed with the petitioner. The petitioner's character also is questionable and she is having illicit intimacy with a provision store merchant. The petitioner was even discouraging the minor boy not to continue his education as he belongs to Scheduled Caste, will be easily able to get job. Now, he is spending Rs. 20,000 per year for the education of the minor boy, and as the boy is studying in Brindavan Residential School, his tranquility will be affected if the petitioner is permitted to meet the child along with some strangers. When, he is a natural guardian of the minor boy and he is spending lavishly for the education of the boy, there is no need to appoint the petitioner as the guardian of the minor boy and given custody of the child to the petitioner. If the petitioner is appointed as guardian of the minor, the future of the child will be very much affected. Therefore, the petition has to be dismissed.

4. The point for consideration is whether the petitioner is entitled to be appointed as guardian of her minor boy Karthik alias Karthigeyan and to take custody of the boy.

5. POINT

The petitioner and the respondent are husband and wife, got married in 1981. The respondent/husband is working as a Typist in Tamil Nadu Electricity Board. Now his place of work is Coimbatore. The minor boy Karthik was born to them on 2-1-1983. Some how, now the husband and wife have fallen out and the respondent is alleging adultery on the part of his wife though the same is not proved by any evidence.

6. It appears from the pleading and also the evidence, that only on flimsy grounds, the respondent has abandoned his wife, the petitioner. The petitioner is the only witness examined in this case. The respondent has not gone into the box. The petitioner has spoken in her evidence that after her marriage and after the birth of the child Karthik, she and her husband were living in Royapettah, Madras and as she brought certain sarees and other presents given to her and her child by her parents, the respondent scolded her and in the wordy quarrel, he threatened her to leave the house before he returned from the office and, therefore, according to the petitioner, she left the matrimonial house to her parents' house in Adyar. This had happened in 1986 when the boy was about 3 years old. Even though in the counter, the allegation of scolding the petitioner for receiving the presents of her parents, is denied, the respondent has stated that the petitioner had left the matrimonial house without his permission and she also had taken away the household articles to her parents and this was objected to by him. When the petitioner was living with her husband separately in Raya-pettah, I do not think that the petitioner would have taken away the articles from her husband's house to her parents' house. Any how, it is also mentioned in the counter affidavit that the petitioner left to her parents' house without his consent. Therefore, from these allegations, it is clear that only on account of the flimsy domestic quarrel between husband and wife, now the Respondent is not prepared to take his wife back,

7. The petitioner has spoken in her evidence that subsequently her husband came to her father's house to take her back and as her mother wanted to advise the respondent through her husband, who is working in Trichy and was awaiting for his return from Trichy, she could not be sent along with the respondent on the

same day and as it was postponed for a few days, again, the respondent became furious and even tried to take away the child with him, which was prevented by the neighbours. Therefore, the respondent seems to have further hardened his attitude towards the petitioner and even filed a Habeas Corpus petition in the High Court for the production of the child in Court for taking custody of the child but the same was dismissed by this Court as the mother was entitled to keep the custody of the child, aged less than 5 at that time. Even though this petition is only of the appointment of the petitioner, as guardian of the minor: and for taking custody of the child, it became necessary to mention the background on which the husband and wife have fallen out.

8. It is in evidence of PW 1 that after the completion of 5 years by the minor boy, the respondent again filed O.P. No. 192/87 for the custody of the child and as the respondent wanted to admit the child in Brindavan Residential School, Attur, Chingleput, it appears that the Court directed the petitioner to admit the boy in the said school and she was visiting the boy during holidays. The learned counsel for the petitioner represents that the respondent later on withdrew the petition and informed the school authorities that except him, who is the guardian of the child, no one should be allowed to meet the boy Karthik and therefore she finds it difficult to meet the boy in the hostel where he is staying. It appears that while O.P. No. 192/87 was pending, the Court permitted the petitioner to meet the boy in the hostel of Brindavan School, but as the petition was withdrawn by the respondent, the respondent took upper-hand to obstruct the petitioner from meeting the child. So only after that, the mother has filed this petition to appoint her as the guardian of her minor boy and to give her the custody of the minor.

9. In the petition filed by the petitioner, the only allegation against the respondent is that he is very arrogant, very much harsh and rude and he will be always with grim face expressing rigidity in every-thing. The petitioner has deposed alleging cruelty against him and harsh in his conduct and behaviour. Even during the pendency of this petition, when she had been to the hostel to meet the boy, she was beaten by holding her hair in the presence of so many people. As a matter of fact, in the cross examination of the petitioner, the respondent himself suggested that she was beaten by the respondent a few days before the petitioner gave

evidence and it was suggested to the petitioner that as she came with her paramour by name Sho alias Kanniappan, the respondent became furious and beat her by holding her hair. But the petitioner in her evidence has spoken that she is not having any laches in her moral virtues and she has no contact with any person by name Sho alias Kanniappan and this suggestion by the learned counsel for the respondent is only to spite her. As a matter of fact in the counter itself, the respondent would state that he was not able to prove the laches of the petitioner. He has not even mentioned the name of the alleged paramour of the petitioner though he would state that a Maligai shop owner was the paramour. There is no evidence on the respondent's side to prove the bad character of the petitioner. The petitioner has stated in her evidence that on the day when she was beaten in Brindavan School, her brother and brother's wife also came to see the boy and no other stranger accompanied her and by about 05.00 p. m. when the respondent also came there to see the boy in the hostel room, which is in the first floor of the building, she came down to the ground floor allowing the respondent to chat with his child, but the minor boy within a few minutes came down to the ground floor to call his mother as she was required by his father and the respondent suddenly beat her in the presence of the so many-people in the premises of the hostel itself. As mentioned above, in the cross-examination of the petitioner, this incident has been admitted by the respondent but it is justified by saying that she was found with her paramour whereas this has been denied by the petitioner, according to whom, only her brother and brother's wife came on that day to see her child. Whatever may be the allegation of the respondent, without any proof, it cannot be taken that this petitioner is a woman of questionable conduct. Anyhow the allegations of the petitioner that her husband is always harsh, not only to her but also to her child and is grim faced with the expression of rigidity in everything, are uncontroverted by the respondent.

10. This petition has been filed not only for taking custody but also for appointing the petitioner as the guardian of the minor boy. Except the rigid quality of the respondent, no other allegations have been made against the respondent to declare that he is unsuited to be the guardian of the minor child Karthik. When he is the father and natural guardian of the minor boy. I do not find any serious allegation against him to remove him from the guardianship of the minor. Therefore,

the petitioner is not entitled to claim the removal of the guardianship of the respondent.

11. Then coming to the custody of the minor boy, which is really a very delicate subject, it has to be considered taking into consideration of the welfare of the minor boy. In the counter, it is stated that when the respondent is the guardian of the minor boy, there is no need for giving custody of the boy to the petitioner mother. This contention is not correct because for the sole reason that one happens to be the guardian of the minor, it is not always necessary that the custody of the minor shall be only with the guardian. It is true that in olden days when the males were in dominating position, the mother of the child was not considered as a fit person to be a guardian as the fair sex was considered to be a weaker sex as though they were unable even to take care of themselves. But in modern days, the females also have taken up equal responsibility not only in the day-to-day affairs of the domestic administration but also even in the social changes. They are earning by working and some maintain the family also. Therefore, nowadays the family burden is mostly equally shared both by man and woman. In this changed social set up, there is no place to think that a woman is unfit to bring up her own child and only the male is fit for that purpose. In view of this changed circumstances, now the Courts are considering only the paramount welfare of the minor child to give custody of the minor.

12. The respondent is a Typist employed in the Tamil Nadu Electricity Board, now working in Coimbatore. The petitioner, who is living in her parents' house, at Madras says that she is also doing business in selling sarees and making out some income to maintain herself. It is true that there is disparity in the earnings of the petitioner and the respondent. But the income alone cannot be a deciding factor in the matter of custody of the minors. The minor boy has been admitted in Brindavan School in Attur. which is a residential school, and therefore now the boy is staying in the hostel attached to Brindavan School, in Attur. He will be sent home only during the vacation period. It was suggested on behalf of the respondent that he is spending more than Rs. 18,000 per year for the education of the minor boy Karthik. It may be so, because the boy is put up in a residential school and for boarding and lodging, the expenses may touch around Rs. 1,000/-

per month. Therefore, I think that there is no necessity now to change the place of stay of the minor boy, affecting his education. But it appears that the respondent is objecting the petitioner, meeting her minor boy in the hostel and during vacation times, he himself is taking away the boy with him to his place of stay, that is Coimbatore. The petitioner is not such a sinner, to conceal her own child from her very sight itself. Thus attitude of the respondent itself is very cruel even towards his own child Karthik. It is the natural character of every child to have affinity and attachment to the parents and especially it will be more to the mother because sometimes the father may not be liberal. In this case, from the evidence of PW 1 and also from the conduct of the Respondent, which I explained above, the respondent seems to be a taskmaster with aggressive and threatening attitude to his wife and son. Leaving the minor boy throughout in his custody without allowing the boy to see the face of his mother, who is the symbol of [the affection, will be the greatest harm done to his minor boy. As the respondent is living alone in Coimbatore, when the boy is taken with him for his stay, there is no one to look after the welfare of the minor boy as the respondent will be leaving to his office in the morning and he will be back only in the evening. Even if it is taken that the respondent is showering all his affections to the minor boy, it is only one half of the affection, which a boy of this age should receive from both of his parents. As he is kept away from his mother, only to avoid from getting the maternal affection, it is not conducive for the physical and mental growth of the minor boy and the unfortunate boy may not be able to express his anguish to his father, who is always very much rigid. So, the boy must be suppressing his thirst of maternal love, buried at the bottom of his heart. This cannot be allowed anymore. In the interest of the minor boy. he must spend his vacation with his mother also, whose genuine love and affection will soothe the heart of the love thirsty child.

13. I have already met the allegation of the immoral conduct made against the petitioner. In the counter of the respondent, it is alleged that the petitioner's father is a drunkard, her brothers are illiterates and the locality in which they reside is a harbouring place of criminals and therefore, the boy cannot be allowed to stay with the petitioner. The petitioner's father is now working in Trichy as admitted in the counter also. Therefore, the respondent need not apprehend that his drunkard father-in-law will spoil the character of the minor boy. Even if the respondent's

father is a drunkard, I do not think that any grandfather, however bad he may be, would intend to spoil the character of his grandson. These are all unsavoury expressions of the respondent. As a matter of fact, the evidence discloses that it is the petitioner's father, who is working in the Tamil Nadu Electricity Board as a Foreman, secured the job for his son-in-law, the respondent. With regard to the locality in which the petitioner is residing, she has spoken in her evidence that her father's house is not in a slum area surrounded by huts and the house of her father is a terraced building in Adyar. Even assuming that the petitioner is living in a slum area, the respondent, who married her knowing that she dwelled in a slum, cannot say that he will not allow his child to live with his mother, as she hails from a poor family living in a slum. We cannot take it that everyone living in a slum area, is a criminal, unworthy of any character and unfit to live in the society. Such wrong notions reveal only the immaturity of the mind of the respondent. There are so many honest and God-fearing people among the slum dwellers, having upright and exemplary character. The respondent cannot brand every slum dweller as a criminal and drunkard. Any how the evidence of PW 1 discloses that her father, who is drawing a salary of Rs. 4,000 is living in a decent locality in a terraced house of his own and there is no evidence on the respondent's side to establish that the petitioner, who is the mother of the child is completely unfit to have custody of the child, even for a day.

14. Now, taking into consideration of all the aspects, the petitioner mother, who is the symbol of affection and kindness to her minor son, will certainly improve the welfare of the minor Karthik alias Karthigeyan, who is life in the residential school and as there is no substitute for the maternal affection, it has become an absolute necessity to allow the boy to spend the major portion of his vacation with his mother in her custody. As the respondent father is living alone, he will not be able to properly attend on the needs of the minor boy or to shower the affection, which is needed for the boys of the tender age. As the minor boy has to continue his education by staying in the hostel attached to Brindavan School for which the respondent is spending money, the petitioner shall have the custody of the minor boys 3/4th period of the vacation not only in summer holidays but also for Dasara holidays and Christmas holidays.

15. In case, if the minor boy is withdrawn by the respondent from Brindavan School, I feel that the custody can be given to the petitioner as she has plenty of time to spend for her boy and attend on his welfare though for the education of this boy, the respondent father has to spend. Therefore, the petitioner shall take custody of the minor boy Karthik in case if the minor boy was withdrawn from the Brindavan School for any reasons. No doubt on such event, the respondent is entitled to have the custody of the minor boy for one week during summer vacation and three days for each of the other vacations like Dasara vacation and Christmas vacation. Therefore, the order has to be passed accordingly.

16. In the result, the prayer for the appointment of the petitioner as the guardian of the minor is rejected. But she is permitted to have the custody of the minor boy Karthik @ Karthigeyan for 3/4th of the summer holidays, Dasara holidays and Christmas holidays so long the boy stays in Brindavan Residential School. In addition to that, she is also permitted to see the boy in the hostel once in 15 days. In a case if the boy is withdrawn from Brindavan Residential School, the petitioner is entitled to have custody of the boy with her and allow the boy to stay with the respondent/father for 10 days during summer vacation, 3 days each for the Dasara and Christmas holidays. Both parties, may seek the aid of the Police to enforce this order in case of necessity. There will be no order as to costs.

17. APPLICATION NO. 3368 of 1993

In view of the order passed in the main petition, this application has become unnecessary and dismissed.

18. Order accordingly.