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CMA No. 2981 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2026

CORAM

THE HON'BLE MS. JUSTICE P.T. ASHA

AND

THE HON'BLE MRS.JUSTICE N. MALA

CMA No. 2981 of 2026

AND

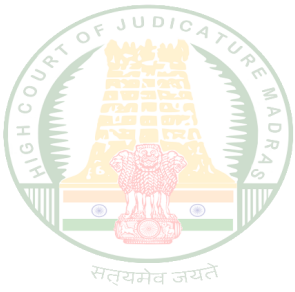
CMP NO. 22912 OF 2026

..Appellant(s)

Vs

..Respondent(s)

Prayer:Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act,1984 to set aside the judgment of the Family Court-cum-Additional District and Sessions Court, Udhagamandalam in O.P.No.54 of 2024 dated 29.08.2025.



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For Appellant(s): Mr.J.Franklin

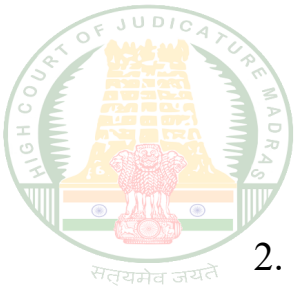
Judgment**(Judgment of the Court was delivered by P.T.Asha J.)**

Rumi, the 13th century, Persian poet and Sufi mytic, describes a mother's love as follows:

*"I love you neither with my heart nor with my mind, just in
case my heart might stop
and my mind might forget.
I love you with my soul.
The soul never stops or forgets."*

The children in the instant case have not been blessed with this love and the narration herein below will justify this observation.

Challenging the dismissal of her request for custody of her minor children, a son, ~~Thayya Kumar~~ now aged about 9 years and daughter ~~Thayya Kumar~~ now aged about 7 years by the learned Judge, Family Court-cum-Additional District and Sessions Court, Udhagamandalam in O.P.No.54 of 2024 that the appellant/mother is before us.



2. The facts of the case as set out in the respective pleadings are herein below set out.

Case of the appellant/petitioner

(i) The appellant and the respondent had got married on 23.03.2015 at The Nilgiris as per Hindu rites and the customs prevalent in their community. It is out of this wedlock that the minor children, who are the subject matter of the guardian petition were born. The appellant would contend that she was a woman of a “sterling character”, educated and with a gentle disposition. It is her case that she had treated her husband and his family with affection and care. She would submit that due to a misunderstanding with her husband she has been sent out of the matrimonial home and the children are with the respondent.

(ii) She would submit that they are at an age when they require maternal care. After she had been sent out of her matrimonial home she is living with her parents and as on the date of the petition, it was nearly 6 months since she had seen her children. She would submit that moral values are absolutely necessary and keeping the children with the



respondent who is deficient in this regard is not conducive for the welfare of the minors and therefore she has come forward with the present petition.

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3. Case of the respondent

(i) The respondent would submit that the appellant is of loose moral character and was caught indulging in immoral and illicit relationships. The respondent would contend that the appellant had scant regard for the well being of her children and the children were fed junk food and made to sleep early to facilitate the petitioner's phone calls with other men. The respondent, her husband, would contend that late night phone calls were the norm and the excuse given was that it was a cousin with whom the appellant was chatting. Later, it was found that it was a person called ~~Lokesh~~ from Kuruthukulli Village. When warned, she promised to mend her ways however this assurance has been observed in the breach. She had taken away a gold chain weighing 44.70 gms belonging to the respondent to give it one ~~XXXXXXX~~ who had pledged the same with the cooperative Bank. The parents of the appellant and the respondent with very great difficulty managed to recover the same from the said ~~XXXXXXX~~



(ii) On 14.02.2023 her whatsapp message had reflected the words “I love you” and thereafter when the respondent, who entertained a suspicion, had gone through the whatsapp chats he noticed that the appellant had shared her nude and semi nude photos to third persons and that she had video called several persons during the late hours. The respondent unable to accept the above conduct of the appellant had dropped her at her parents' place on 20.02.2023 and apprised them of the situation. On 04.03.2023 when their son was hospitalized the appellant and her mother had visited the child like any other third party. When the child underwent a blood transfusion she was not present. The respondent in his counter has given details of the phone numbers belonging to the appellant and stated that a perusal of the same will prove the late night calls / video calls and sharing of intimate photos. The respondent has in the counter contended that she is free to visit the children at a common place. He would submit that the children cannot be given in custody to the appellant as her conduct has rendered her unfit to be a given custody of the minor children. He therefore prayed for the dismissal of the petition.

4. The appellant had examined herself as P.W1 and marked Exs.P1 to P6. The respondent examined himself as R.W1 and marked Exs.R1 to

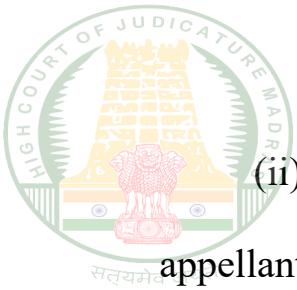


R3 and during the cross examination of P.W1 he had marked the cell phone as R.M.O.1. The paternal uncle of the respondent was examined as R.W2 and R4 was marked through him. The learned Judge, Family Court cum Additional District and Sessions Court, Udthagamandalam had dismissed O.P.No.54 of 2024. Challenging the same, the appellant is before this Court.

5. We have heard the arguments of the learned counsel for the appellant for admission and also perused the order and related papers filed in this appeal.

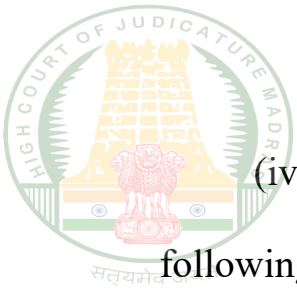
6. Discussions

(i) The case of the appellant is that she was sent out of her matrimonial home and deprived of the company of the children. It is her contention that the children require the mother for inculcating moral values to them which is an important facet for their well being.



(ii) The respondent father on the other hand would state that the appellant / mother is a lady of loose morals and if the children are left in her company it would be detrimental to their well being.

(iii) The Hon'ble Supreme Court has time and again observed that Courts exercise parens patriae jurisdiction in cases of custody of minor children and what has to be looked into is only the welfare of the minors. In the case of *NIL Ratan Kundu V Abhijit Kundu 2008 (7) SCC Page 413* the Hon'ble Supreme Court had discussed the legal position regarding custody as understood in the various laws like English law, American law and the Indian law. The common feature and the underlying caution sounded in all of these is the “welfare of the child”. The word “welfare” has also to be considered in its widest sense including moral or religious welfare alongside physical well being. The Indian laws in this regard viz The Guardian and Wards Act, 1890 or the Hindu Minority and Guardianship Act, 1956 both emphasize on the welfare of the minor as the paramount / dominant factor to be taken into consideration by the Courts of law.



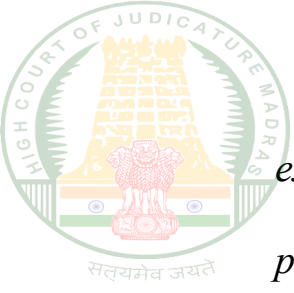
(iv) In the case on hand, the respondent/husband has given the following instances of the appellant's moral character.

- a) Appellant has shared nude and semi-nude pictures of her to third parties.*
- b) Some of the pictures which are selfies have been taken with the minor children.*
- c) She has been having late night calls / video calls to other men.*

All these allegations point to a person who has a low moral fibre and whose company would be detrimental to the welfare and well being of two minor children who are at an impressionable age.

(v) To prove the said allegations the respondent has marked Ex.R3- Pen drive during the cross examination of the appellant herself. That apart he has also produced Ex.R.M.O.1 cell phone. The learned Judge who has perused the same contends as follows:

“On perusal of Ex.R3 Pen-drive and Ex.RMO.1. Cellphone Gallery, they reveal that they contain nude and semi-nude photographs of the petitioner . It shows the perverted and obnoxious sexual desire of petitioner



exhibiting her private parts to her extra marital partners”.

He has further observed as follows:-

“The said proved and admitted tact of semi-nude and nude photographs , more specifically displaying her private parts, shows the immoral and valueless character of the petitioner. It is settled law while considering the custody matters, the Courts are expected to give due weightage to the moral and spiritual value of the children.”

(vi) We are also compelled to look into the evidence of the appellant as P.W1. She admits R.M.O.1 is her cellphone and that it contains her nude and semi nude photos with the children.

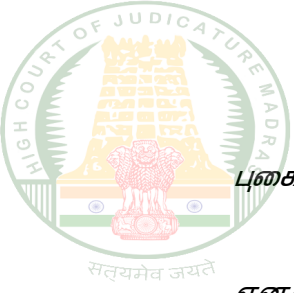
“என்னிடம் காண்பிக்கப்படும ExR.M.O.1 செல்போனில்

உள்ள புகைப்படத்தில் நான் அரை நிர்வாணமாக இருக்கும்போது

எனது குழந்தைகளும் அந்த புகைப்படத்தில் இருப்பதாக உள்ளது

என்றால், சரி தான். அந்த புகைப்படத்தை எனது கணவர் தான்

எடுத்தார். என்னிடம் காண்பிக்கப்படும Ex.R.M.O.1.



புகைப்படத்தில் மேலாடையின்றி நான் எடுத்த செல்பி புகைப்படத்தில்

எனது குழந்தைகளும் அருகில் உள்ளார்கள் என்றால் சரி தான்.

அப்போது எனது கணவரும் அருகில் இருந்தார்.

She admits that she would have conversations with the men named therein while travelling back home from work during the period 2019 to 2023. Her evidence in this regard is as follows:-

“நான் பயன்படுத்திய இரண்டு செல்போன் எண்களிலிருந்து

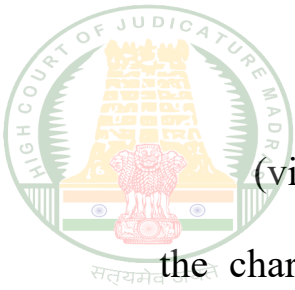
2019 ஆண்டு முதல் 2023 பிப்ரவரி எனது வீட்டிற்கு செல்லும்

வரை சோமசுந்தரம், கோபாலகிருஷ்ணன், லோகநாதன்(எ) லோகு,

கௌதம்., அக்சய், சபர்ஸ் ஆகியோரின செல்போனிற்கு

அழைப்புகள் சென்றுள்ளன என்றால் சரி தான்.”

(vii) The learned Judge has observed that though the appellant would state that her husband was also present when the photos were taken however he is nowhere there in the selfies taken by the appellant which only goes to show that he was not present at that time.

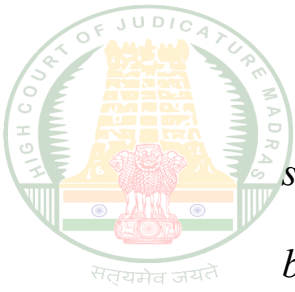


(viii) Therefore, through these documentary as well as oral evidence the character of the appellant has been brought to our notice by the respondent.

(ix) Now exercising our parens patriae jurisdiction we have to decide if the order passed by the learned Family Judge is correct or not and whether it has taken in the welfare of the minor children.

(x) The Hon'ble Supreme Court in the judgment of ***Rosy Jacob Vs Jacob A Chakramakkal (1973) 1 SCC 840*** has observed that object and purpose of the Guardians and Wards Act, 1890 is not restricted to merely handing over physical custody of the minor but also the protection of the ward's health, maintenance and education. The learned Judges observed that children are not mere chattels, nor toys for the parents. They went on to observe as follows:

“42.The absolute right of parents over the destinies and the lives of their children, in the modern changed social conditions, must yield to the consideration of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of

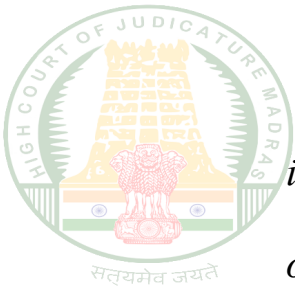


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society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of the welfare of the minor children and the rights of their respective parents over them.”

(xi) In yet another case reported in **(2019) 7 SCC 42 [Tejaswini Gaud Vs Shekhar Jagdish Prasad Tewari]** the learned Judges discussed that the welfare of the minor child is the paramount consideration from Paras 26 onwards. The learned Judges relied upon para 52 of the judgment in the case of **Nil Ratan Kundu V Abhijit Kundu 2008 (7) SCC Page 413** which is extracted herein below:

“52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody Cases,

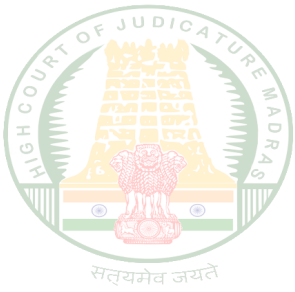


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is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary, comfort, contentment, health education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored . They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgement, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

(xii) In the case of ***NIL Ratan Kundu Vs Abhijit Kundu (2008) 9 SCC 413*** the Hon'ble Supreme Court has discussed the test that has to be undertaken by the Courts dealing with custody matters as follows:-



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“57. In our opinion, in such cases, it is not the "negative test" that the father is not "unfit" or disqualified to have custody of his son/daughter that is relevant, but the "positive test" that such custody would be in the welfare of the minor which is material and it is on that basis that the court should exercise the power to grant or refuse custody of a minor in favour of the father, the mother or any other guardian.”

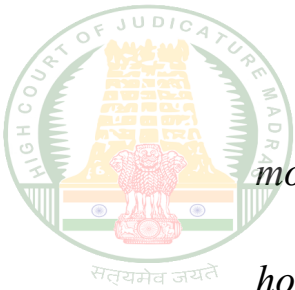
(xiii) We belong to a culture where a child cuts its teeth with the age-old adage, “Matha, Pitha, Guru, Deivam,” wherein the mother is held in a position higher than that of God.

(xiv) Poets and writers have praised and extolled the role of mothers. Kalil Gibran, in his poem “***The Broken Wing***” had this to say of a mother.

“The most beautiful word on

the lips of mankind is the word

"Mother," and the most beautiful call is the call of "My



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mother." it is a word full of

hope and love, a sweet and

kind word coming from the depths of the heart. The

mother is everything: she is

our consolation in sorrow,

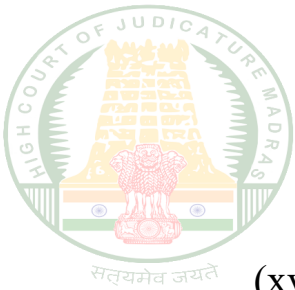
our hope in misery, and our

strength in weakness. She is the

source of love, mercy,

sympathy, and forgiveness."

(xv) Unfortunately, the appellant before us has failed to remember her duty and status as a mother and that it is the mother who inculcates good behaviour to the children right from the time she breastfeeds her child. The minors in question are at an impressionable age if their custody is handed over to the appellant mother, considering her admitted conduct, they would grow up without understanding the difference between what is morally and ethically correct.



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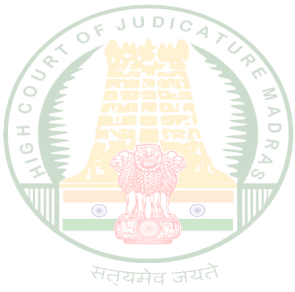
(xvi) Therefore, in the light of the above discussion, we find that the Learned Family Judge has rightly rejected the petition by considering the overall well-being and welfare of the minor children and we see no reason to disagree with the same. Accordingly, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(P.T.A.,J.) (N.M.,J.)
01-09-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

The Family Court-cum-Additional District
and Sessions Court,
Udhagamandalam



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**P.T.ASHA J.
AND
N.MALA J.**

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