

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

Mat.Appeal.No. 583 of 2015 ()

AGAINST THE ORDER IN OP 634/2013 of FAMILY COURT, TIRUR DATED 09-01-2015

APPELLANT/PETITIONER:

FATHIMATH SUHARA K.K,
AGED 25, D/O. HAMSA KALLAYI,
ARICHOL MANZIL, PUTHUR (PO),
KOTTAKKAL, TIRURANGADI TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.V.A.AJIVAS

RESPONDENT/CONTER PETITIONER:

1. NOUFAL C.H,AGED 29 YEARS,
S/O.ISMAYIL HAJI, CHALILAKATH HOUSE,
KAKKAD (PO), THIRURANGADI TALUK,
MALAPPURAM DISTRICT.

2. SHAMA, AGED 25 YEARS,
W/O. NOUFAL, CHALILAKATH HOUSE,
KAKKAD (PO), TIRURANGADI TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

BY ADV. SRI.K.RAKESH

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
Mat.A.No.583 of 2015
.....

Dated this the 2nd day of July, 2015.

JUDGMENT

Ramakrishnan, J:

The petitioner in O.P.No.634/2013 on the file of the Family Court, Tirur is the appellant herein. The petition was filed by the petitioner herein before the Family Court, seeking permanent custody of the children to her under section 25 of the Guardian and Wards Act.

2. The case of the appellant in the lower court was that the first respondent married her on 9.3.2008 and two children were born to them in that wedlock. The elder child was Shahana, aged 3 ½ years and younger child was Shahma, aged 2 years. The second respondent in this case is the second wife of the first respondent. Due to difference of opinion, the appellant and the first respondent started residing separately. The first respondent filed a petition before the Family Court for custody of the children and that was compromised on 20.12.2012. At the time of compromise, at the instance of the first respondent, the appellant filed a joint statement allowing

custody of the minor children with the first respondent with a stipulation in the agreement that whenever the appellant wants to meet the children, the first respondent shall provide access to the children. At the time of executing the agreement, there was an oral understanding between the parties that whenever the first respondent wants to leave the place or wants to remarry, the minor children will be given back to the appellant. Even though the first respondent has given custody of the children to the appellant for one or two months, at the instigation of the second respondent, the custody of the children was not given later. The children were not being looked after by the second respondent properly. So the appellant was compelled to file a petition for permanent custody of the children. The respondents appeared and filed counter denying the allegations. The appellant was examined as PW1 and first respondent was examined as RW1 and Exts.B1 was marked on the side of the respondents. After considering the evidence on record, the court below found that the appellant is entitled to get absolute custody of the minor children Shahana and Shagma and directed the first respondent to hand over custody of the children within one month. It is further ordered

that the change of custody of the minor children shall not adversely affect the education of the children in any manner. The appellant was directed to allow the first respondent and his relatives to visit the children as and when the first respondent is available at the native place. It is further observed in the order that if the first respondent requires custody of children during holidays, he has to approach the court and obtain separate orders for the same without adversely affecting the education of the children. This part of the judgment of the court below is being challenged by the appellant by filing the above appeal.

3. Heard counsel for the appellant.

4. Counsel for the appellant submitted that the last portion of the judgment requires clarification as if the overnight custody of the children is given, that will affect their interests.

5. As far as visitatorial right of the father is concerned, the court below was perfectly justified in granting visitatorial right to the father and his relatives, that too at the time when he was available in his native place. So there is no necessity to interfere with that portion of the judgment of the court below.

6. As regards the second portion is concerned, there is no ambiguity in the order as apprehended by the counsel for the petitioner. It was made clear in the order itself that for interim custody of the children during holidays is required, the first respondent, who is the father of the children, has to move the Family Court to get appropriate orders. The appellant's right to object that part is not affected by the observations of the court below in the order. If such an application is filed, the petitioner is at liberty to raise objections and the Family Court is directed to consider and pass appropriate orders considering the objection of the appellant in the above matter and pass appropriate orders in that application in accordance with law.

With the above observations this appeal is dismissed.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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