

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Mat.Appeal.No. 277 of 2014 ()

AGAINST THE ORDER IN OP 458/2007 of FAMILY COURT,
KOTTAYAM, DATED 12-11-2013

APPELLANT(S) :

R.JAYAN, 2 F2, MUTHOOT GREEN VALLEY,
KRISHNA NAGAR, PEROORKADA, TRIVANDRUM.

BY ADV. SRI.GEORGE POONTHOTTAM

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RESPONDENT(S) :

M.G.PARAMESWARA PANICKER,
RESIDING AT GOVINDA VIHAR, AYMANAM VILLAGE,
MARIYATHURUTHU, KOTTAYAM DISTRICT-686 015

BY ADV. SRI.M.B.SANDEEP

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
12-08-2015 ALONG WITH MAT.APPEAL NO.443/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

:2:

Mat.Appeal.No. 277 of 2014

APPENDIX

PETITIONER'S EXHIBITS :

- ANNEX.-A1 : COPY OF THE JUDGMENT IN MAT APPEAL NO.1044/2010
DATED 07.04.2011.
- ANNEX.-A2 : COPY OF THE JUDGMENT IN OP(FC) NO.2910/2012
DATED 12.11.2012.
- ANNEX.-A3 : COPY OF THE ORDER DATED 29.11.2012 IN OP(FC)
2910/2012.
- ANNEX.-A4 : TRUE COPY OF THE ORDER DATED 04.12.2012 IN
OP(FC) 2910/2012.
- ANNEX.-A5 : COPY OF THE ORDER DATED 10.12.2012 IN OP(FC)
NO.2910/2012.
- ANNEX.-A6 : COPY OF THE ORDER DATED 18.12.2012 IN OP(FC)
NO.2910/2012.
- ANNEX.-A7 : COPY OF THE ORDER DATED 30.01.2013 IN RP
NO.742/2012 IN MAT APPEAL NO.1044/2010.
- ANNEX.-A8 : COPY OF THE ORDER DATED 11.04.2013 IN OP(FC)
NO.2910/2012.
- ANNEX.-A9 : COPY OF THE ORDER DATED 20.05.2013 IN OP(FC)
NO.2910/2012.
- ANNEX.-A10 : COPY OF THE JUDGMENT DATED 10.09.2013 IN RP
724/2013.
- ANNEX.-A11 : COPY OF THE ORDER IN I.ANO.700/14 IN OPNO.458/07
DATED 2.5.2014
- ANNEX.-A12 : COPY OF THE COMPLAINT DATED 9.5.2014.

RESPONDENT(S) ' EXHIBITS :

- ANNEX.-R(a) COPY OF THE WRITTEN STATEMENT OF THE CHILD,
WHICH WAS FILED BEFORE THE CHILD WELFARE
COMMITTEE.

//True Copy//

P.A. to Judge

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

Mat. Appeal No.277 of 2014 &
Mat. Appeal No.443 of 2015

Dated this the 12th day of August, 2015

JUDGMENT

K. Ramakrishnan, J

Both these appeals were filed by the respective respondent and petitioner in I.A.Nos.227/2013, 564/2013, 1233/2013, 1788/2013 and 540/2013 in O.P.No.458/2007 of Family Court, Kottayam at Ettumanoor against the common order passed in those applications by the Family Court. Respondent herein is the maternal grandfather of the minor child Miss.Gouri J. Nair, who was born in the wedlock between the appellant in M.A.No.277/2014 and daughter of the respondent in that case. Father of the minor is the appellant in Mat. Appeal No.277/2014 while grand father is the appellant in Mat.Appelal No.443/2015. I am referring for the status of the parties as father and grandfather and also as described in Mat. Appeal No.277/2014 for convenient

sake. After death of the mother of the minor girl, there arose dispute regarding the custody of the child which resulted in filing of O.P.No.458/2007 by the father which went up to Supreme Court and the permanent custody of the child was given to the father who is the appellant therein. Thereafter visitorial right was given to the grandparents. As per the orders of the court, the child was handed over to the appellant father. Subsequently during one of the vacations, the child was handed over to the grandparents and after the holidays were over, the child was not handed over back to the father, which resulted in filing of the above I.A's by respective parties, seeking modification of the custodial right of the child and also for taking action against the grandfather for violating the orders of the court. The Family Court after consideration of all the matters passed the impugned common order, whereby the permanent custody of the child was directed to

be given to the father and on all 2nd Saturdays child was directed to be handed over to the grandfather at 8.00 a.m and he shall keep custody of the child till 6.00 p.m during the following Sunday and handing over of the child and return of the child has to be done from the residence of Sri.Ramesh, the eldest son of the grandfather of the minor girl at Thiruvananthapuram. The grandfather was also permitted to take the child outside the limits of Thiruvananthapuram city and he can take the child to his house at Kottayam during those days. It is further ordered that on every Saturday excluding 2nd Saturday, the father shall bring the child to the house of Sri.Ramesh at Thiruvananthapuram at 10.00 a.m and the grandfather can have company of the child in that house till Sunday evening 5.00 O'clock and during these days, the child shall not be taken outside the limits of Thiruvananthapuram and at 5.00 p.m on Sunday, the child shall be handed over to the father

at the very same house. During Onam, Christmas and Summer vacations, the custody of the child was given to the grandfather during the first half of every such vacation, that too from the house of Sri.Ramesh and the child will have to be returned on expiry of the period to the father from the house of said Sri.Ramesh. During the rest of the period, the child shall be with the father. If there is breach of any of the terms prescribed above, the parties are at liberty to approach the Family Court or D.G.P., Thiruvananthapuram, to get directions implemented scrupulously. Dissatisfied with the common order passed regarding the visitorial right, father filed M.A.No.277/2014 and after long delay, the grandfather also filed M.A.No.443/2015 with delay condonation application, after condoning the delay the appeal was posted for admission. Since the dispute arose in respect of the same issue in both the appeals, we feel that the M.A.No. 443/2015 also can be admitted. So the same is

also admitted and the counsel appearing for the father in M.A.No.277/2014 entered appearance for the respondent in M.A.No.443/2015 as well.

2. Even during the pendency of this appeal also, there were some interim arrangements which were also not properly complied with. The child was with the grandfather and he has repeatedly stated that the child is not willing to go with father though he has no objection for the same. So under the circumstances, we felt that interaction can be made with all the parties to arrive at an amicable settlement regarding the welfare of the child and accordingly we have interacted with the father of the child, the child as well as the grandfather of the child earlier. Since the child was not willing to go with the father and considering the later development of the case, the father told this court that he has no objection in giving interim custody of the child with Sri.Ramesh, the eldest son of the grandfather of the child,

who is working as Scientist in Sri Chithira Thirunal Institute of Medical Science and Technology, Poojappura, Thiruvananthapuram, so that she can stay and pursue her study from there and the child was also willing for the same. She also expressed her willingness to go from there to her father's house, but she is not interested in the over night stay in the house of her father and when this was put to the grandfather, he has also no objection for the same. Accordingly in the interaction, all of them have unanimously agreed that though father/ appellant is the legal guardian, considering welfare and interest of the child, the interim custody of the child can be given to the maternal uncle Sri.P.Ramesh, Scientist, Sree Chithirathirunal Institute of Medical Science and Technology, Poojappura, Thiruvananthapuram and she can be permitted to stay with him in his house at Thiruvananthapuram and continue her studies in the school in which she is now being admitted

and it was also agreed that both the grandfather and the father need only the visitorial right of the child from that house.

3. Accordingly we have posted the case today to ascertain the willingness of Sri.Ramesh in this regard and Sri.Ramesh agreed to take the custody of the child considering the paramount welfare of the child. On the basis of the interaction we made with the child and both father and the grandfather and the maternal uncle Sri.Ramesh, we also felt that it is better for the welfare and the interest of the child, instead of shuttling the child between the father and the grandfather on the basis of interim custody of the child, she can be peacefully allowed to live with her maternal uncle Sri.Ramesh and that will be good for the betterment and future for the child also. So on that basis, the orders passed by the court below are set aside and modified as follows:

1. As agreed between the parties, though father is the legal guardian of the child, the interim custody of the child Miss.Gouri J.Nair, is given to her maternal uncle Sri.P.Ramesh, who is working as Scientist in Sree Chithira Thirunal Institute of Medical Sciences and Technology, Poojappura, Thiruvananthapuram, and she is permitted to stay with him in his house at Poojappura and pursue her studies from there until further orders.

2. Both the father and grandfather are given the visitorial right of the child from the house of Sri.Ramesh, after giving prior intimation to him.

3. Both the father and the grandfather, if they want and if the child is willing to go with them, are permitted to take the child from outside the city of Thiruvananthapuram as well, but any way the child will have to be returned to the house

of Sri.Ramesh without fail.

4. The mother and sister of the father Jayan are also permitted to have interaction with the child from the house of Sri.Ramesh, whenever they want after giving prior intimation to Sri.Ramesh for this purpose and also taking his convenience in this regard and on such occasion, Sri.Ramesh is directed to make arrangements for interaction of the child with those persons as well.

5. If the child wants to go with them outside and Sri.Ramesh is directed to permit them to take the child outside also and bring back the child to the house and this can be done only during holidays, so that the education of the child will not be affected. During Onam, Christmas and summer vacation, if the child wants to stay with the grandparents on both sides either maternal or

paternal and also with the father, then she can be permitted to stay with them for such period during which she wants to stay with them. Sri.Ramesh can make necessary arrangement for that purpose also. If both the parties consent for division of the holidays between them that also can be considered by Sri.Ramesh and necessary arrangement can be made for that purpose by himself.

6. Sri.Jayan, father of the child is directed to pay ₹7,500/- per month as maintenance for the child to meet her education and other expenses. Sri.Ramesh is permitted to start an account in the name of the minor to be operated by him in a nationalized bank and inform the savings bank account number to Sri.Jayan, the father of the child, so that he can make regular remittance of the amount in that account which Sri.Ramesh if

wants can operate and withdraw to meet the expenses of the child.

7. If any modification is required regarding the custody of the child in future, then parties are at liberty to move the Family Court for that purpose and the Family Court is at liberty to pass appropriate orders in that application in accordance with law.

With the above modification of the impugned common order passed by the court below, both the appeals are disposed of accordingly

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge