

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

Mat.Appeal.No. 900 of 2011 ()

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AGAINST THE JUDGMENT AND DECREE DATED 16-07-2011IN
OP (G&W) 697/2009 of FAMILY COURT, ALAPPUZHA**

APPELLANT/RESPONDENT:

**JOSE PAPPY,
VILAYIL T.P.HOUSE, PEROOR KARAZHMA,
VEDARAPLAVU P.O., ALAPPUZHA,
REPRESENTED BY HIS POWER OF ATTORNEY
THOMAS PAPPY, VILAYIL T.P.HOUSE, PEROOR KARAZHMA
VEDARAPLAVU P.O., CHARUMMOODU,
MAVELIKKARA TALUK, ALAPPUZHA.**

**BY ADVS.SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP**

RESPONDENT/PETITIONER:

**LILYKUTTY VARGHESE
D/O.IDICULA VARGHESE,
NADAVALLY THUNDIL, PUNTHALA P.O.
VENMONY VILLAGE, CHENGANNUR TALUK,
ALAPPUZHA-689 503.**

BY ADV. SRI.JACOB CHACKO

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 17-07-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

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

Mat. Appeal No. 900 OF 2011

DATED THIS THE 17th DAY OF JULY, 2015

J U D G M E N T

K. Ramakrishnan, J:

Respondent on OP (G&W) 697/2009 on the file of Family Court, Alappuzha is the appellant herein.

2. The appeal was filed by the appellant through his power of attorney holder-father. The appellant and respondent are husband and wife and 3 female children were born to them in that wedlock. After some time, their relationship strained and they were residing separately and both of them admittedly were working abroad. At that time there arose some dispute regarding custody of the children. So the respondent herein filed OP (G&W) 697/2009 before the Family Court, Alappuzha seeking permanent custody of the children. After evidence, the family court allowed that original petition in part. The court below had granted joint custody of the children to both parents as they were

working abroad at that time and the paternal grand parents of the children were permitted to retain custody of the children for the purpose of providing education to them. It is also ordered that whenever the respondent came from Gulf, the custody of the children has to be given to her and on her departure, she will have to hand over custody of the children to the paternal grand parents. She was also given permission to have interaction with the children and talking to the children over phone as well. The court below also ordered that the children must be admitted in Balikamadam, Thirumoolapuram to continue their studies there. Aggrieved by the condition granting custody of the children during her coming to India on holidays is being challenged by the appellant by filing this appeal.

3. The grievance of the appellant is that if the custody of the children were given during the working day that will affect their studies. He has no objection in giving the custody of the children to the mother during holidays. Further if both the parents came, the court below directed

priority must be given to the mother as the children were female children. So that extent they wanted modification of the order.

4. When the appeal was pending, the respondent lost her job abroad and came back to India and so she filed a petition before the family court seeking custody of the children as I.A. 609/2013 and the court below had passed an order granting permanent custody of the children to the mother-respondent herein in modification of the original order dated 16-07-2011. Against that, the appellant herein filed Mat. Appeal 363/2013 and that Mat. Appeal was disposed of by this court by order dated 12-06-2013, whereby the parties have entered into an agreement regarding the custody of the children and appellant had agreed to give custody of the children to the mother and she was permitted to admit the children in St. Jude's English Medium School, Venmony and the father was given visitorial right. It is also mentioned in the judgment that whenever the respondent herein wants to go abroad, she

must handover custody of the children to the appellant herein and he will be at liberty to admit the children in Balikamadam School or any other school having hostel facilities. She has given visitorial right as well.

5. On the basis of this, since the custody was not given, the appellant moved this court for getting custody of the children during vacation and accordingly, this court has granted custody of the children to the father during vacation. Accordingly the children were handed over to the father during vacation at that time and after vacation, the children were re-entrusted to the respondent. During this year, children were given as per the earlier orders of this court, but she did not take back the children. So he was compelled to re-admit them in Balikamadam School itself and in view of the joint custody granted the school authorities are finding it difficult and respondent is making some disturbance in the school. So he filed the present I.A 1738/2015 (wrongly shown as IA 1738/2014 in the petition) appoint the appellant as guardian of the minor children and

granting permanent custody of the children to him in modification of the earlier orders.

6. This was opposed by the counsel for the respondent and according to him the respondent is likely to get employment abroad and she is likely to go abroad and he had no objection in retaining the earlier order passed by the family court in OP (G&W) 697/2009 giving right to get custody during vacation whenever she come back to India is sufficient.

7. Heard both sides.

8. In view of the subsequent order passed by this court in Mat. Appeal 363/2013 which was based on a agreement entered into between the parties, the subject matter in this appeal lost significance as by virtue of the subsequent order, the order passed by the court below in the original petition got modified. So nothing survives to be considered in this appeal at present.

9. Considering the present controversy, since the respondent wanted to go abroad and also expressed before

this court that she has no objection in retaining the custody of the children with the father, we feel that the custody of the children can be given to the father and in the absence of the father, the children can be looked after by the paternal grand parents of the children and the present schooling of the children can be continued in the same institution. Whenever the respondent-mother comes to India, the custody of the children can be given to her during the holidays of the school and also during vacation. If both the parents are available in India at the same time, then the vacation can be divided between the parents equally, dividing first half of the vacation giving custody to the mother and 2nd half of the vacation to the father and on other holidays, the custody of the children will be given to the mother, if she is available in India. Further the maternal grand parents of the children also will have a right of interaction with the children. They may be permitted to see the children from the school on the last Saturday of every month in the presence of the school authorities without

causing any disturbance to the school authorities and as per the regulations of the school and boarding. The mother is also given permission to see the children during the working days from the school during lunch hours without causing any obstruction to the education of the children and with the permission of the school authorities.

With the above modification of the order passed by the court below, the appeal is disposed of.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

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P.A. to Judge