

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 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

OP (FC).No. 59 of 2015 (R)

AGAINST THE ORDERIN GOP 152/2014 of FAMILY COURT,ERNAKULAM

PETITIONER:

RAGAM P.NAIR,D/O. A.PARAMESWARAN NAIR,AGED 32 YEARS,
AGED 59 YEARS, SNEHASREE HOUSE,
EDAPPALLY SOUTH VILLAGE, VENNALA KARA
KANAYANNUR TALUK, VENNALA P.O.

BY ADVS.SRI.K.V.JAYACHANDRAN
SRI.RAJU V.MATHEW
SRI.MATHEW ABRAHAM (OLIYIL)

RESPONDENT:

PRAKASH K.,S/O.BALAKRISHNAN,AGED 38,
KUTTIYIL HOUSE, OORALUNKAL VILLAGE, VADAKARA TALUK
MADAPPALLY COLLEGE P.O., KOZHIKODE DISTRICT.

R1 BY ADV. SRI.M.S.UNNIKRISHNAN
R1 BY ADV. SMT.JAYASREE MANOJ
R1 BY ADV. SRI.JITHIN PAUL VARGHESE
R1 BY ADV. SRI.K.SUNIL
R1 BY ADV. SMT.CHITHRA.S.BABU
R1 BY ADV. SMT.T.P.SHELNA
R1 BY ADV. SMT.M.PPRIYANKA

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORIGINAL PETITION NO.152/2014 FILED BY
RESPONDENT AGAINST THE PETITIONER.

EXT.P2:TRUE COPY OF THE AGREEMENT DT.05.10.2012 EXECUTED BETWEEN THE
PETITIONER AND THE RESPONDENT.

EXT.P3: A TRUE COPY OF I.A.NO.1437/2014 FILED ON 10-4-2014 BY
RESPONDENT SEEKING INTERIM CUSTODY OF THE MINOR CHILD FOR 10 DAYS
DURING MID-SUMMER VACATION.

EXT.P4: A TRUE COPY OF THE I.A.NO.3064/2014 DT.19-8-2014 FILED BY THE
RESPONDENT FOR VISITING CHILDREN.

EXT.P5: A TRUE COPY OF ORDER DT.27-12-2014 IN EXT.P3, I.A.NO.1437/2014,
GRANTING INTERIM CUSTODY OF THE MINOR CHILD FOR 2 DAYS.

RESPONDENT'S EXHIBITS:NIL

/TRUE COPY/

P.S TO JUDGE

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

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O.P.(FC)No.59 of 2015
.....

Dated this the 10th day of July, 2015.

JUDGMENT

Ramakrishnan, J:

This original petition is filed by the respondent in GOP.No.152/2014 challenging Ext.P5 order passed by the Family Court and also to quash the proceedings pending before the that court invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner and the respondent were husband and wife and an unfortunate minor girl of 7 years was born to them in the wedlock. Thereafter the relationship strained, which resulted in divorce and Ext.P2 agreement was entered into between the parties regarding the custody of the child and as per the agreement, permanent custody of the child was given to the mother with visitorial rights for the father twice in a month. Since that was not complied with, he filed Ext.P1 petition as GOP.No.152/2014 seeking a declaration the petitioner as the guardian of the minor child. He filed Ext.P3 and Ext.P4 applications seeking interim custody of

the child and the learned Family Court while disposing I.A.No.1437/2014, granted interim custody of the child to the father/respondent for two days on 29.12.2014 and 30.12.2014 and directed the petitioner herein to handover custody of the child at 10 a.m on 29.12.2014 till 5 pm on 30.12.2014 and the custody of the child will be given back to the mother on the evening of 30.12.2014 in the court premises. This order is being challenged by the petitioner by filing this writ petition.

3. Heard counsel for the petitioner and the respondent.

4. Counsel for the petitioner submitted that the main petition (guardian OP) itself is not maintainable as the only prayer sought for is to declare him as guardian of the minor and as per Section 6 of the Hindu Minority and Guardianship Act, the father is the natural guardian and there is no necessity to declare him as a guardian. Further, he is now staying in a room in a lodge and there is non to look after the child as well. The mother had no objection in giving visitorial rights to the father from the Family Court premises. Overnight custody of the child to the father in the lodge may be avoided, is the submission made.

5. Counsel for the respondent submitted that though Ext.P5 order was passed in December, 2014, the custody of the child was not given and no steps have been taken to implement that order. This Court has stayed the order passed by the court below for one month and from time to time it was extended.

6. We are not going into the question as to whether a petition filed by the father before the court below is maintainable or not and that question can be raised by the petitioner before the Family Court and if such an objection is raised and wanted that to be heard as a preliminary point, then Family Court is at liberty to consider that request and pass appropriate orders in that application. Without resorting to that remedy, we feel that it is not proper for quashing the proceedings invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

7. As regards the interim custody granted, though the period that has been granted has been expired, we feel that to protect the interest of the child and also the interest of the parties and allow the child to have interaction with the father

also during the pendency of the proceedings before court below, some modifications can be made in Ext.P2 agreement regarding the visitorial rights and we feel that allowing the respondent/father to have interaction with the child on all Saturdays from the Family Court premises from 10 a.m to 3 p.m will be sufficient and that will meet the ends of justice. So the writ petition is disposed of as follows:

i. If the petitioner raises the question of maintainability to be decided as a preliminary point, then Family Court is directed to consider and pass appropriate orders on that question in accordance with law.

ii. The respondent is granted visitorial rights of the child on all Saturdays between 10 a.m and 3 p.m and the petitioner is directed to produce the child before the CMO of the Family Court at 10 a.m and CMO is directed to permit the respondent to have interaction with the child from the court premises till 3 p.m and thereafter return the child to the petitioner at 3 p.m after making necessary entries in the register kept in that court for that purpose.

iii. Further, if the parties want to have any modification of

the visitorial rights, then they 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 directions and observations, this writ petition is disposed of.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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