

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

OP (FC).No. 81 of 2015 (R)

AGAINST THE ORDER/JUDGMENT IN OPGW 238/2014 of FAMILY
COURT,TRIVANDRUM

PETITIONER:

ROY P.S. AGED 47 YEARS, POONTHALA HOUSE,
VAVVAKKAVU P.O, KARUNAGAPPALLY.

BY ADVS.SMT.K.P.SANTHI
SRI.R.JAYAKRISHNAN (MUTHUKULAM)

RESPONDENT:

RETTY P. THOMAS, AGED 45 YEARS,
NOW RESIDING AT GOVERNMENT STAFF QUARTERS
RAJEEV NAGAR, MELARANNOOR, KARAMANA PO
THIRUVANANTHAPURAM.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 05-
03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(OPFC 81/2015)

PETITIONER'S EXTS.

EXT.P1 TRUE COPY OF THE PETITION O.P(G& W) NO.214 OF 2012
BEFORE THE FAMILY COURT.

EXT.P2 TRUE COPY OF THE PETITION O.P(G&W) NO.1695/2011
BEFORE THE FAMILY COURT, KOLLAM (RENUMBERED AS O.P
(G & W)NO.238/2014 BY TRIVANDRUM FAMILY COURT)

EXT.P3 TRUE COPY OF THE MEDICAL CERTIFICATE.

RESPONDENT'S EXTS :- NIL

Lgk

//true copy//

PS TO JUDGE

V.K.MOHANAN & P.D.RAJAN, JJ

.....
OP(FC) No.81 of 2015

.....
Dated 5th March 2015

JUDGMENT

V.K.MOHANAN, J

The petitioner herein, who is the respondent in O.P (G & W) No.214 of 2012, is also the respondent in O.P(G & W) No.203 of 2014 filed by the respondent herein, who is the petitioner in O.P(G & W)No.214 of 2012, before the Family Court, Thiruvananthapuram. The elder daughter of the petitioner viz Roshny Mary Roy is with him whereas the younger daughter is with the wife, who is the respondent. The respondent herein, who is the wife of the petitioner preferred two original petitions, OP(G & W)No.214 of 2012 and O.P (G & W)No.238 of 2014 respectively for the permanent custody of two daughters born in their wed lock. The court below ordered joint trial of the above two original petitions and now the above cases stand posted to 9.3.2015 for the report of the Commissioner appointed for recording evidence. The grievance now projected by the petitioner is that though the petitioner requested the court for an adjournment of the case and examination of the elder daughter of the petitioner, as it is inconvenient for her to appear and give evidence, because

her examination scheduled from 2.3.2015 to 28.3.2015. Therefore in this OP, it is prayed that the proceedings of the Commissioner and the Family Court, Thiruvananthapuram regarding OP(G&W) 238 of 2014 may be directed to be kept in abeyance for a period of three months and appearance of the second witness before the Commissioner may be postponed after three months.

2. As we are proposing to dispose of this OP at the admission stage itself, notice to respondent is dispensed with.

3. Learned counsel for the petitioner submitted that the examination of the elder daughter of the petitioner, who is studying in 7th standard has already commenced from 02.03.2015 which will be ending only on 28.03.2015. Therefore, it is practically impossible and inconvenient for the elder daughter to appear before the Commissioner and to give evidence, particularly when she is an Asthma patient. Though the learned counsel for the petitioner submitted that a request was made before the court below to postpone the recording of the evidence and examination of the elder daughter of the petitioner and that request was not considered, no material is produced to substantiate the above fact.

4. Having regard to the facts and circumstances of the case, we are of the view that this original petition can be disposed of directing the court below to postpone the proceedings in order to enable the elder daughter of the petitioner to give evidence.

In the result, this original petition is disposed of directing the Family Court, Thiruvananthapuram to postpone all the proceedings in OP(G & W) 214 of 2012 including recording of the evidence, for a period of one month from today and the Court below is directed to fix another date for the examination of the elder daughter of the petitioner as witness in the above original petition.

V.K.MOHANAN, JUDGE

P.D.RAJAN, JUDGE

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