

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 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

OP (FC).No. 178 of 2015 (R)

AGAINST THE ORDER/JUDGMENT IN GOP 1965/2011 of FAMILY COURT,ERNAKULAM
DATED 16.4.2015

PETITIONER/RESPONDENT:

ANNA SABITHA AGED 33 YEARS,
W/O. JUDESON, MATHIRAPPILLY HOUSE, NAZARETH ROAD
ANGAMALI, PIN-683572, ERNAKULAM DISTRICT
REPRESENTED BY POWER OF ATTORNEY HOLDER SAJINI
AGED 39 YEARS, W/O. ROMY, CHELATU HOUSE
NEERIKODE KARA, ALANGAD VILLAGE, ERNAKULAM DISTRICT.

BY ADV. SMT.P.K.PRIYA

RESPONDENT/PETITIONER:

A.A.JUDESON, AGED 45 YEARS,
S/O. ANTONY, ALUVAPARAMBIL HOUSE, PUTHUVYPE.P.O.
ERNAKULAM DISTRICT-682016.

R1 BY ADV. SRI.LAL K.JOSEPH
R1 BY ADV. SRI.A.A.ZIYAD RAHMAN
R1 BY ADV. SRI.V.S.SHIRAZ BAVA
R1 BY ADV. SRI.JOSEPH KURIAN VALLAMATTAM

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE POWER OF ATTORNEY WAS EXECUTED IN FAVOUR OF HER SISTER SAJINI.

EXT.P2 TRUE COPY OF THE I.A.NO.2056/2014 IN I.A.NO.3257/2012 IN OP NO.1965/2011 FILED BY THE PETITIONER.

EXT.P3 THE TRUE COPY OF THE COUNTER TO I.A.NO.2056/2014 IN I.A.NO.3257/2012 IN OP NO.1965/2011

EXT.P4 THE TRUE COPY OF THE ORDER IN I.A.294/2014

EXT.P5 THE TRUE COPY OF THE I.A.NO.1418/2015.

EXT.P6 THE TRUE COPY OF THE COUNTER FILED BY THE PETITIONER IN I.A.NO.1418/2015.

EXT.P7 THE TRUE COPY OF THE ORDER IN I.A.NO.1416/2015 IN O.P.1965/2011 DATED 16/4/2015.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S TO JUDGE

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

.....
O.P.(FC)No.178 of 2015
.....

Dated this the 22nd day of May, 2015.

JUDGMENT

Ramakrishnan, J:

This original petition is filed by the petitioner, who is the respondent in I.A.No.1416/2015 in O.P.No.1965/2011 on the file of the Family Court, Ernakulam, challenging the order passed in that application.

2. It is alleged in the petition that petitioner and respondent are wife and husband and petitioner is the respondent in O.P.No.1965/2011. The original petition was filed by the respondent herein seeking custody of the first child now with the petitioner. They are having another child in that relationship, who is now with the respondent. The child was studying in Vidhyadhiraja Higher Secondary School, Angamali. The respondent herein filed I.A.No.1416/2015 seeking direction to get transfer certificate from Vidhyadhiraja Higher Secondary School, Angamali to enable him to get admission to his daughter in another school at Kakkanad. The reason stated in the application was that there was an interim arrangement regarding custody of the child, in respect of

whom original petition has been filed, to the effect that custody of the child will be given to the respondent herein on all holidays including weekends and since that was not complied with, he filed an application along with this petition for permitting the child to be admitted in another school, for that purpose directing the school authorities to issue transfer certificate. The petitioner herein filed a detailed counter statement denying the allegations and also stated that it will affect the interest of the child. The family court judge by Ext.P7 impugned order allowed the application, which is under challenge by filing this petition.

3. Heard the counsel for the petitioner and the respondent.

4. Learned counsel for the petitioner submitted that the child is under the custody of the petitioner and now the petitioner is employed abroad and the child is being looked after by her parents. The school in which the child is sought to be admitted is at Kakkanad which is not near to the house of the respondent also. Now the young child is directed to be put in a residential school denying parental affection as well and that will affect the interest of the child. Further, there

is no necessity at present to change the situation and disturb the studies of the child as well. Further the court below had not considered the contentions but simply passed the impugned order stating that interest of the child has to be taken into consideration. The counsel also submitted that interim arrangement regarding custody of the child is still in force and the trial of the case has already been started and at this stage, there is no necessity for changing the curriculum of the child, which will only affect the interest of the child.

5. On the other hand, the counsel for the respondent submitted that the petitioner is in custody of the elder child and he did not object the custody because the child is with her for the last one year. Now the petitioner is employed abroad and grandparents are looking after the child. On enquiry, it was revealed that the child was not good in studies because of want of attention of grandparents of the child, he wants to put her in a better school taking into account the welfare of the child.

6. It is an admitted fact that the petitioner and respondent are wife and husband and they got two children in the wedlock and elder female child is now with the petitioner in respect

of whom the original petition has been filed by the respondent seeking permanent custody of the child as well. It is also an admitted fact that the second child is having some illness and that child is with the respondent and he is looking after him. The fact that the child was studying in Vidhyadhiraja Higher Secondary School, Angamali is not in dispute. Further, the respondent also had no case that the education being given in that school is not having good standard and that was the reason why he wants to shift the child to another school. The syllabus which is followed is also the same in the residential school. According to the respondent, if the child is put in residential school, there is a possibility of the child being given good education by the teachers of that school. We are afraid of that submission. A child of young age is expected to be under the custody of parents or grandparents which will be more beneficial to the welfare of the child. Putting the child to a residential school may not always necessary to lead for a better result as submitted by the counsel for the respondent. The objection raised by the petitioner has not been considered by the court below as well. What is stated in the impugned order is only that it is in the interest of the child that child will

have to be shifted to a better school though the respondent himself had no case that school in which the child is now studying is not a good school as well. Further there is already interim arrangement regarding the custody of the child made in the proceedings and that is in force. There is no circumstance existing for change of curriculum of the child at this stage especially when the trial of the case had already been started. The reason stated by the court below for granting relief by simply mentioning that it is necessary in the interest of the child appears to be not correct and it was made without application of mind and considering the circumstances of the case as well. So under the circumstances, we feel that the order passed by the court below is unsustainable in law and the same is liable to be set aside and we do so. The petitioner is permitted to admit the child in the same school in which she was studying earlier namely Vidhyadhiraja Higher Secondary School, Angamali and if the respondent feels that the child is not good at studies, he is at liberty to provide all facilities for giving tuition by appointing good teachers and meeting expenses for that purpose. That need not be objected by the petitioner. The trial court is directed to

expedite the trial of the case since trial has already been started. The respondent is directed to take steps to get back the transfer certificate already obtained from the Vidhyadhiraja Higher Secondary School, Angamali or get transfer certificate from the Marthoma School in which the child is admitted at present and hand over the same to the petitioner without delay so as to enable the petitioner to readmit the child to the same school in which the child was studying earlier before the school reopens after summer vacation.

With the above observations and directions, this petition is allowed and disposed of accordingly.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

