

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 3RD DAY OF JUNE 2015/13TH JYASHTA, 1937

OP (FC).No. 213 of 2015 (R)

AGAINST THE ORDER IN I.A.NO.527/2015 IN O.P.NO.155/2015 OF FAMILY
COURT, TIRUR

PETITIONERS/PETITIONERS:

1. MUHAMMED EARATTAYIL, AGED 69 YEARS,
S/O LATE ABDU, PAYYANAKKAL HOUSE, PALAPPATTY PO,
VIA VELIYAMKODE, MALAPPURAM DISTRICT-679 579

2. SHAHIDA RAYAMARAKKARVEETIL,
W/O MUHAMMED EARATTAYIL, PAYYANAKKAL HOUSE,
PALAPPATTY PO, VIA VELIYAMKODE,
MALAPPURAM DISTRICT-679 579

BY ADVS.SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND
SMT.INDULEKHA JOSEPH

RESPONDENTS/RESPONDENTS:

1. FATHIMA SUHARA M,
W/O. ARSHAD, PANDARATH HOUSE, VALAYAMKULAM,
CHIYYANNUR PO, MALAPPURAM DISTRICT-679 585.

2. ARSHAD,
S/O ANDRAKUNHU, PANDARATH HOUSE, VALAYAMKULAM,
CHIYYANNUR PO, MALAPPURAM DISTRICT-679 585

BY ADV. SRI.K.K.MOHAMED RAVUF

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 A TRUE PHOTOCOPY OF THE PHOTOGRAPHS SHOWING INTIMATE RELATION WITH THE MINOR AND THE PETITIONERS' FAMILY MEMBERS.

EXT.P2 A TRUE PHOTOCOPY OF THE MEMORANDUM OF ORIGINAL PETITION (G&W) 155/2015 DATED 13/03/2015 BEFORE THE FAMILY COURT, TIRUR.

EXT.P3 A TRUE PHOTOCOPY OF THE AFFIDAVIT DATED 13/3/2015 ATTACHED TO THE INTERLOCUTORY APPLICATION SWORN BY THE PETITIONERS.

EXT.P4 A TRUE PHOTOCOPY OF THE WRITTEN OBJECTION DATED 28/03/2015.

EXT.P5 A TRUE PHOTOCOPY OF THE LIST OF DOCUMENTS DATED 25/05/2015 FILED BY THE PETITIONERS BEFORE THE FAMILY COURT, TIRUR.

EXT.P6 A TRUE PHOTOCOPY OF THE ORDER DATED 06/05/2015.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S TO JUDGE

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

.....
O.P.(F.C.)No.213 of 2015
.....

Dated this the 3rd day of June, 2015.

JUDGMENT

Ramakrishnan, J:

The petitioners in I.A.No.527/2015 in O.P.No.155/2015 on the file of the Family Court, Tirur have filed this petition challenging the order passed in that application invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

2. It is alleged in the petition that petitioners are the paternal grandparents of the minor child Hana Sherin, who is the only daughter of their predecessor son, born in the first respondent. She is aged 6 ½ years old. After the death of the son, the child was with the mother. Thereafter she remarried. The second respondent is the present husband of the first respondent, mother of the minor child. The above original petition was filed for permanent custody of the child by the paternal grandparents on the ground of remarriage of the mother of the child. They filed I.A.No.527/2015 for interim custody of the child in the week ends and also during

Id-ul-Fitar, Bakrid, Onam, X'mas and summer vacation holidays. The respondent filed counter opposing the application. After considering the submission of both sides, the Family Court passed Ext.P6 order directing the first respondent to allow the petitioners to visit the minor child on all Sundays in between 11 a.m and 1 p.m and to have acquaintance with the minor child for one or two hours. With the above direction, the Family Court disposed of the application, which is being challenged by the petitioners by filing this petition.

3. Heard learned counsel for the petitioners and the respondents.

4. Learned counsel for the petitioners submitted that petitioners are the paternal grandparents. They have got visitorial right. Further the mother married again and they are the legal guardian under the Muslim Law and as such they are entitled to get permanent custody of the child. Further, he had also submitted that the court below ought to have granted interim custody as prayed for as no loss will be caused to the respondents in allowing the same.

5. The petition was opposed by the counsel for the

respondents on the ground that the child has not seen the grandparents and the child is aged 6 ½ years and custody cannot be granted to the petitioners as claimed.

6. The fact that petitioners are the paternal grandparents of the minor child is not in dispute. Further, till the death of the father, the child was living with the parents along with the paternal grandparents. Only after the death of the father, she was compelled to live with the mother in her matrimonial house. The fact that she married again is not a ground at this stage while considering the interim custody application to divert the custody from the mother as the child is aged only 6 ½ years. But the court below was not justified in restricting the visitorial right between 11 am and 1 p.m in order to have acquittance with the minor child for one or two hours. The fact that the child was living in the petitioners' house till the death of her father will go to show that there is no difficulty for the paternal grandparents to have acquaintance with the minor child. So under the circumstances we feel that the order passed by the court below can be modified directing the first respondent to give custody of the minor child to the petitioners on all Sundays between 10 a.m and 5 pm and the

petitioners are directed to take custody of the child from the house of the first respondent and return the child within the time mentioned above. If any further modification is required in this matter regarding custody of the child, petitioners are at liberty to move the Family Court as and when necessity arises, even asking for interim custody during vacation and other other holidays.

With the above modifications and directions, the writ petition is disposed of.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

