

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 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

OP (FC).No. 265 of 2015 (R)

AGAINST THE ORDER/JUDGMENT IN OP 1699/2012 of FAMILY COURT,
KOTTAYAM

PETITIONER(S)/PETITIONERS:

1. JIJU LUKOSE AGED 65 YEARS
S/O.LUKOSE GEORGE, NOW R/A.1300 WORCESTER ROAD
FRAMINGHAM, MA 01702, BOSTON
USA HAVING NATIVE ADDRESS AT PLATHOTTAM HOUSE
ATHIRAMPUZHA P O, KOTTAYAM 686562
(REPRESENTED HIS FATHER AND POWER OF ATTORNEY HOLDER
GEORGE LUKODE, THE 2ND PETITIONER HEREIN)
2. GEORGE LUKOSE AGED 65 YEARS
S/O.LATE MR GEORGE, PLATHOTTAM HOUSE, ATHIRAMPUZHA P O
KOTTAYAM 686562

BY ADVS.SRI.DIPU.R
SMT.P.A.PRIYA
SRI. SIYAD K.A.

RESPONDENT(S)/RESPONDENT:

SNEHA JOSE
D/O.JOSE KURIAN, VEMPENY HOUSE, VETTIMUKAL P O
ETTUMANOOR , KOTTAYAM 686631

R1 BY ADV. SRI.M.K.CHANDRA MOHANDAS

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 12-
08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 265 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:-TRUE COPY OF THE PETITION BEING NUMBERED AS OP NO 1699/2012 ON
THE FILE OF THE FAMILY COURT, KOTTAYAM AT ETTUMANOOR
P2:-TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS
P3:-TRUE COPY OF THE IA NO 107/2013 IN OP NO 1699/2012 OF THE FAMILY
COURT, ETTUMANOOR
P4:-TRUE COPY OF THE IA NO 524/13 IN OP 1699/2012 OF THE FAMILY COURT,
ETTUMANOOR
P5:-TRUE COPY OF THE IA NO 523/2013 IN OP NO 1699/2012 OF THE FAMILY
COURT, ETTUMANOOR
P6:-TRUE COPY OF COMMON ORDER IN IA NO 2277/12, IA 107/13, IA 524/13 &
IA 523/13 IN OP NO 1699/2012 DTD 30/3/2015 OF THE FAMILY
COURT,ETTUMANOOR
P7:-THE RELEVANT PAGES OF LAW COMMISSION REPORT

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

PS TO JUDGE

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

OP(FC).No. 265 of 2015

Dated this the 12th day of August, 2015

JUDGMENT

K.Ramakrishnan,J.

This is a petition filed by the petitioners challenging the order passed by the court below in IA 107/2013, 524/2013 and 523/2013 in OP.1699/2012 on the file of the Family Court, Kottayam at Ettumanoor under Article 227 of the Constitution of India.

2. OP. No.1699/12 was filed by the respondent herein against the petitioners for return of gold ornaments, money and declaration of the title in respect of a property. In that petition, the petitioners filed interlocutory applications IA.No.107/13 and 524/13 seeking visitation right of the child who was born to the respondent herein in the wedlock with the 1st petitioner herein. IA.No.523/13 was filed by the respondent herein against the petitioners for initiating prosecution under section 340 of the Criminal Procedure Code alleging that they have produced some

fabricated documents before the court. Respondent herein also filed IA.No.2277/12 for attachment before judgment and petitioners filed counter stating that the interim attachment granted will have to be lifted. The Family Court considered all these applications together and disposed of the same by Ext.P6 common order by which interim attachment ordered in IA.2277/2012 was made absolute. IA.No.107/2013 and IA.524/2013 were allowed in part permitting the petitioners to see and interact with the child at the premises of the Family Court on every saturday between 10 a.m and 4 p.m whenever the 1st petitioner/father is available in Kerala and dismissed IA. No.523/2013.

3. Aggrieved by the order passed by the court below in IA.No.107/2013,524/2013 and also 523/2013, the present petition has been filed by the petitioners. When the petition came up for hearing today, counsel for the petitioners confined their arguments in respect of orders passed in IA.107/13 and 524/13 alone. So this court is not considering the validity of the order passed in IA. 523/2013 in this petition invoking supervisory jurisdiction under Article 227 of the Constitution of India.

4. Counsel for the petitioners submitted that visitorial right

of the grand parents was denied in the absence of the father which is unsustainable in law. As the father is working abroad and he will not be able to come frequently and frequent visitation right of the grand parents cannot be denied on that ground.

5. Counsel for the petitioners also submitted that since the father is working abroad, he may be permitted to interact with the child over phone and unless such a direction is given, the mother will not permit the children to interact with the father.

6. Counsel for the respondent submitted that she had no objection in father and grand parents visiting the child but custody cannot be given to them. They can exercise that right either from the house of the respondent or from the court premises.

7. Since most of the fact relating to the relationship is admitted, we are not extracting the same in the judgment again to avoid repetition. The court below had considered all the aspects and passed an order permitting the petitioners herein to interact with the child from the court premises on every Saturday between 10 a.m. and 4 p.m. But there is a restriction that it can be possible whenever the father is available in India. The grand parents are also entitled to have visitation right to interact with

the grand child. That will only promote harmony between the family members and that will be beneficial for the interest of the child as well. The restriction made by the court below for visitation right of the grand parents only in the presence of the father appears to be little harsh. We feel that some modification can be made in this regard. So we feel that paternal grand parents of the child can be permitted to interact with the child on alternate Saturdays from the Family Court premises between 10 a.m. and 2 p.m.

8. As regards the visitorial right of the father is concerned, the arrangement made by the court below shall continue till the disposal of the case. The respondent is directed to permit the father to have interaction with the child over phone if he makes such a request on the understanding that the 1st petitioner shall not abuse or cause any inconvenience to the mother over phone . She is directed to permit the 1st petitioner to have interaction with the child over phone between 6 p.m. to 8 p.m. Further considering the fact that evidence has already been started, the court below is directed to expedite disposal of the case as expeditiously as possible, at any rate within 3 months from the date of receipt of a copy of this judgment.

With the above modification and direction, the writ petition is disposed of. Communicate the order to the court below at the earliest.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/