

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

OP (FC).No. 330 of 2015 (R)

(AGAINST THE ORDER DATED 9.7.2015 IN I.A.NO.1037/2015 IN O.P.155/2015
OF THE FAMILY COURT, TIRUR)

PETITIONER(S) :

FATHIMATH SUHARA M., AGED 28 YEARS
AGED 28 YEARS, W/O.ARSHAD, PANDARATH HOUSE
VALYAYAMKULAM, CHIYYANNUR PO.
MALAPPURAM DISTRICT - 679 585.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENT(S) :

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

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

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

R1&R2 BY ADVS. M/S.SRI.A.JAYASANKAR,C.V.MANUVILSAN,
MANU GOVIND & INDULEKHA JOSEPH

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 01-10-
2015, ALONG WITH O.P.(FC) 453/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

OP (FC).No. 330 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE OF THE MEMORANDUM OF ORIGINAL PETITION (G&W) NO.155/2015
OF FAMILY COURT, TIRUR.

EXT.P2: TRUE COPY OF THE I.A. NO.527/2015 IN O.P.NO.155/2015 FILED BY
THE RESPONDENTS 1 AND 2 BEFORE THE FAMILY COURT, TIRUR.

EXT.P3: TRUE COPY OF THE COUNTER FILED BY THE PETITIONER.

EXT.P4: TRUE COPY OF THE ORDER DATED 6/5/2015 IN I.A. NO.527/2015 IN
O.P.NO.155/2015 OF FAMILY COURT, TIRUR.

EXT.P5: TRUE COPY OF THE I.A.NO.1037/2015 IN O.P.NO.155/2015 FILED BY
THE RESPONDENTS 1 AND 2 BEFORE THE FAMILY COURT, TIRUR.

EXT.P6: TRUE COPY OF THE COUNTER AFFIDAVIT AND MEDICAL CERTIFICATE
FILED BY THE PETITIONER AGAINST I.A.NO.1037/2015 IN O.P.NO.155/2015
BEFORE THE FAMILY COURT, TIRUR.

EXT.P7: TRUE COPY OF ORDER DATED 9/7/2015 IN I.A.NO.1037/2015 IN
O.P.NO.155/2015 OF FAMILY COURT, TIRUR.

/TRUE COPY/

P.S. to Judge.

s1.

C.K.Abdul Rehim & Mary Joseph, JJ.

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O.P.(FC)Nos.330 & 453 of 2015

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Dated this the 1st day of October, 2015.

JUDGMENT

Abdul Rehim, J.

1. Since the parties are common in both these cases and since the orders under challenge were issued by the Family Court in the very same original petition, both the above cases were considered together and disposed of through this common judgment.
2. Issue arises with respect to interim orders passed by the Family Court, Tirur in O.P.No.155/2015, which is filed under the Guardian and Wards Act, seeking custody of a minor child, namely Hana Sherin, who is now aged 7 years. Case before the Family Court was instituted by the paternal grandparents of the minor child, who are respondents 1 and 2 in O.P.(FC)No.330 of 2015. The petitioner

herein as well as the third respondent in O.P.No.330 of 2015 are the respondents before the court below. The petitioner herein is the mother of the minor child. The third respondent in O.P.No.330 of 2015 is her 2nd husband. Father of the minor child is no more.

3. In the original petition filed before the Family Court, the grandparents have sought permanent custody of the minor child. During pendency of the original petition, they filed I.A.No.527 of 2015 seeking interim custody of the child on all weekends and during the holidays of Id-Ul-Fitr, Bakrid, Onam, X'mas and summer holidays. The Family Court passed Ext.P4 order (produced in O.P.330/15) on 6.5.2015 permitting the grandparents to visit the minor child at the residence of the petitioner herein, on all Sundays between 11 a.m. and 1 p.m. for having acquaintance with the minor child. Being not satisfied with the said order, the grandparents have approached this Court in O.P.(FC)No.213 of 2015. The said original petition was disposed of through Ext.P1 judgment (produced in

O.P.No.453/15). This court found that the court below was not justified in restricting the visitorial right only for two hours. It was noticed that the minor child was living in the house of the grandparents till the death of her father. Therefore, observing that the grandparents may not have any difficulty to have acquaintance with the child, the arrangement was modified. The petitioner herein was directed to give custody of the minor child to the grandparents on all Sundays between 10 a.m. and 5 p.m. The grandparents were permitted to take the child from the house of the petitioner and to return the child within the time stipulated as above. In Ext.P1 judgment, this Court observed that, “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 holidays”.

4. Subsequent to Ext.P1 judgment, the grandparents have moved the Family Court in I.A.No.1037 of 2015 seeking interim custody of the

minor child from 15.7.2015 till 21.7.2015, stating that the school where the child is studying is having holidays during the said period, in connection with Ramzan and Id-Ul-Fitr. The said interim application was considered by the Family Court and passed Ext.P7 order (produced in O.P.No.330/15) observing that the grandparents are entitled for custody of the minor child even otherwise on 19.7.2015 (Sunday) in terms of Ext.P1 judgment. Two more days custody was allowed considering the festival of Id-Ul-Fitr. So the petition was allowed granting custody of the child to the grandparents from 10 a.m. on 18.7.2015 till 5 p.m. on 20.7.2015. The above said order is under challenge in O.P.(FC)No.330 of 2015.

5. When the original petition, O.P.(FC)No.330/2015 came up for consideration before this court, an interim stay was granted with respect to operation of the order passed by the Family Court, subject to the modifications stipulated. This court ordered that, the order passed by the Family Court in I.A.No.1037 of 2015 will stand

modified to the extent of directing the petitioner to hand over custody of the minor child to the grandparents on 18.7.2015, 19.7.2015 and 20.7.2015, from 10.30 a.m. till 5 p.m. The grandparents were directed to entrust back the child to the petitioner on every day before the stipulated time of 5 p.m.

6. But during pendency of O.P.(FC)No.330 of 2015, the grandparents again approached the Family Court in I.A.No.1374 of 2015 seeking interim custody of the minor child from 14.8.2015 to 16.8.2015 and from 27.8.2015 to 30.8.2015. It was contended that the school wherein the child is studying is having holidays on different dates in between the above said periods. The Family Court again considered the said interim application and passed Ext.P5 order (produced in O.P.No.453 of 2015). The court below observed that the grandparents are getting custody of the child on all Sundays during day time, in terms of Ext.P1 judgment. However, finding that there are holidays during Onam, custody of the minor child was allowed to

the grandparents for two days on 29th & 30th October, 2015. Accordingly it was ordered that custody of the child shall be given to the grandparents on 29.8.2015 at 10 a.m. and the grandparents were directed to entrust back the child to the petitioner on 30.8.2015 at 5 p.m. According to the petitioner, the said order was complied with and overnight custody was given to the grandparents on 29.8.2015.

7. The petitioner alleges that the child had a sleepless night on 29.8.2015 and she was seen tired when returned on 30.8.2015. It is stated that, immediately thereafter the grandparents again moved the Family Court in another interim application filed as I.A.1586 of 2015, seeking interim custody of the minor child from 20.9.2015 to 27.9.2015 on the premise that the school was having holidays during the said period. Even though the petitioner filed objections as evidenced from Ext.P7 (produced in O.P.No.453/15) the Family Court again passed Ext.P8 order (produced in O.P.No.453/15). It was observed that the grandparents are getting custody of the minor

child on 20.9.2015, the said date being Sunday. Noticing that Bakrid is on 24.9.2015, custody was ordered to be given from 24.9.2015 at 4 p.m. till 4 p.m. on 26.9.2015. It is aggrieved by the said order O.P. (FC)No.453 of 2015 is filed.

8. While passing the impugned order, the Family Court had relied on the observations contained in Ext.P1 judgment reserving liberty to the grandparents to move the Family Court as and when necessity arises asking interim custody during vacation and holdings. It is contended on behalf of the petitioner that the attitude of the grandparents in filing consecutive interim applications taking advantage of such an observation is intended only to harass the petitioner and it is only with an attempt to get custody of minor child intermittently. It is alleged that, granting interim custody on every holiday will seriously affect studies of the minor child. The petitioner had raised vehement contentions opposing the granting of interim custody of the minor child, based on an allegation that the

child is not at all comfortable during her stay in the house of the grandparents. Per contra, learned counsel appearing for the respondents (grandparents) contended that this court had reserved the liberty to the grandparents to approach the Family Court, only with a view to enable them to have custody of the minor child during when the school is having vacation/holidays.

9. We take note of the fact that the original petition pending before the Family Court is now ripe for trial. The parties before the Family Court cannot be permitted to file interim applications one after another on every occasion seeking custody of the child. It is necessary in the interest of justice to have a permanent arrangement regarding the interim custody, till the disposal of the original petition by the Family Court. It is not proper to approach the Family Court on every now and then with interim applications seeking custody. It is evident that the respondents (grandparents) have approached the Family court at least on four occasions seeking modification of the

interim arrangement regarding custody. We are of the considered opinion that the intention behind incorporating an observation reserving liberty, which is contained in Ext.P1 judgment, is not to give a free hand to the parties to the litigation to burden the Family Court with interim applications one after another. Such a situation need to be avoided. It will be always better to have a permanent interim arrangement with respect to the custody, till the disposal of the original petition. Hence this Court is inclined to order such an arrangement, while disposing these original petitions.

10.Hence, the above original petitions are hereby disposed of by directing the Family Court, Tirur to expedite adjudication and disposal of O.P.No.155 of 2015. All earnest efforts shall be taken to dispose of the original petition within a period of six months from today.

11.Till the disposal of the original petition by the Family Court, the following arrangement is ordered with respect to custody of the

minor child;

(i) The arrangement ordered in the judgment of this Court in O.P.(FC)No.213/15 permitting the grandparents to have custody of the child from 10 a.m. till 5 p.m. on all Sundays, shall continue.

(ii) In addition to the above arrangement, the grandparents are permitted to have custody of the minor child on the previous day of the Sunday falling on 25th October, 2015 at 10 a.m. (i.e. on 24.10.2015). The child shall be given back before 5 p.m. on 25.10.2015. So also, during X'mas holidays, two days additional custody apart from 26.12.2015 is granted on 24th & 25th of December, 2015. The child shall be entrusted custody at 10 a.m. on 24.12.2015 and shall be entrusted back before 5 p.m. on 26.12.2015.

12.The above arrangement is made under the hope that the original

petition will be disposed of by the Family Court before the ensuing summer holidays in the year 2016. In case the original petition is not disposed of within that time, the respondents herein (grandparents) will be at liberty to move the Family Court seeking custody of the child during the summer vacation, through appropriate interim application.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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