

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

OP (FC).No. 497 of 2015 (R)

AGAINST THE ORDER/JUDGMENT IN OPGW 1097/2015 of FAMILY COURT,TRIVANDRUM
DATED 13.08.2015

PETITIONER(S):

SOBHANA NAIR K.N. AGED 60 YEARS
W/O K. SOMASEKHARAN NAIR, RESIDING AT LEKSHMI NIVAS
KUNNUPURAM, VILAPPILASALA PO
THIRUVANANTHAPURAM-695 573

BY ADVS.SRI.V.N.GOPALAKRISHNAN NAIR
SRI.A.CHANDRA BABU
SRI.G.VARUN
SRI.ARUN GOPALAKRISHNA

RESPONDENT(S):

SHAJI S.G.NAIR
ACCOUNTS OFFICER, AIRFOREC STATION
AKKULAM NOW RESIDING AT QUARTERS ARJANT TOWERES
2ND FLOOR, AKKULAM, AIRFOREC STATION

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 29-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: ORIGINAL PETITION NO OP (G&W) NO. 1097/15 DT. 8//15 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM
EXT.P2: I.A. 1750/15 IN OP NO (G&W) NO. 1097/15 DT. 8//15 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM DT. 8/7/15 FOR THE PRODUCTION OF THE MINOR CHILDREN BEFORE THE COURT
EXT.P2(A): I.A. 1756/15 IN OP NO (G&W) NO. 1097/15 DT. 8//15 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM DT. 8/7/15 ,REQUIRING THE RESPONDENT FOR FURNISHING THE DETAILS OF PROPERTIES/MONEY GIVEN TO THE MINOR CHILDREN
EXT.P2(B) I.A. 1844/15 IN OP NO (G&W) NO. 1097/15 DT. 8//15 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM DT. 20/7/15 TO HAND OVER THE CUSTODY OF MINOR CHILDREN
EXT.P2(C) I.A. 1845/15 IN OP NO (G&W) NO. 1097/15 DT. 8//15 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM DT. 20/7/15 ORDER AGAINST RESPONDENT FROM REMOVING THE MINOR CHILDREN FROM THE JURISDICTION OF THE FAMILY COURT
EXT.P3: OBJECTION BY THE RESPONDENT IN IA NO 1844/15 IN OP NO (G&W) NO. 1097/15 DT. 8//15 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM DT. 20/7/15
EXT.P3(A): OBJECTION BY THE RESPONDENT IN IA NO 1845/15 IN OP NO (G&W) NO. 1097/15 DT. 8//15 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM DT. 20/7/15
EXT.P4: REPLY AFFIDAVIT BY THE PETITIONER DT. 1/8/15 IN IA 1750/15 IN OP (G &W) NO. 1097/15 BEFORE THE FAMILY COURT THIRUVANANTHAPURAM
EXT.P4(A): REPLY AFFIDAVIT BY THE PETITIONER DT. 1/8/15 IN IA 1756/15 IN OP (G &W) NO. 1097/15 BEFORE THE FAMILY COURT THIRUVANANTHAPURAM
EXT.P5: CRIMINAL COMPLAINT DT. 3/11/15 AGAINST THE RESPONDENT
EXT.P6: LETTER DT. 11/5/15 FROM THE RTO TO THE SUB INSPECTOR OF POLICE
EXT.P7: PROCEEDINGS DT. 26/5/15 IN RTO FOR (CANCELLATION OF TRANSFER CERTIFICATE)
EXT.P8: FIR NO. 515/15 DT. 15/5/15 BEFORE THE KAZHAKOOTTAM POLICE STATION
EXT.P9: LETTER DT 5/12/14 FROM THE PETITIONER TO THE AIR CHIEF MARSHAL
EXT.P10: LETTER DT 13/4/15 FROM THE PETITIONER TO THE AIR CHIEF MARSHAL
EXT.P11: LETTER DT 21/5/15 FROM THE AIR FORCE AUTHORITIES TO THE PETITIONER
EXT.P12: COMMON ORDER DT. 13/8/15 IN IA 1750/15 (EXT. P2, IA NO. 1756/15 (EXT P2(A), IA 1844/15 (EXT.P2(A) EXT. P2(B) AND IA NO 1845/15 (EXT. P2(C) IN OP (G&W) NO. 1097/15 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P.S. TO JUDGE.

P.R. RAMACHANDRA MENON & ANIL K. NARENDRAN, JJ.

.....
O.P.(FC)No.497 of 2015
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Dated this the 29th October, 2015

J U D G M E N T

Anil K. Narendran, J.

The petitioner has filed this O.P.(FC) under Article 227 of the Constitution of India, mainly seeking an order to set aside Ext.P12 common order dated 13.08.2015 of the Family Court, Thiruvananthapuram in I.A.Nos.1750, 1756, 1844 and 1845 of 2015 in O.P.(G&W)No.1097 of 2015.

2. The petitioner filed O.P.(G&W)No.1097 of 2015 [Ext.P1] before the Family Court, under Section 7 of the Guardians and Wards Act, 1890, read with Section 7 of the Family Courts Act, 1984 seeking for an order to appoint her as guardian of the minor children, viz. Sreya L.S.Nair and Avinash L.S.Nair; to grant her legal custody of the minor children; injunct the respondent from taking away the minor children from her custody, without prior permission of the Court, as long as she keeps the minor children under her custody; and to direct the respondent to transfer due share of the minor children in all the properties, both movable and immovable, left behind by late

O.P.(FC)No.497 OF 2015

2

Lekshmi. Along with the said petition, the petitioner filed I.A.No.1750 of 2015 [Ext.P2] for production of minor children before the Family Court; I.A.No.1756 of 2015 [Ext.P2(a)] mainly for furnishing the details of properties, both movable and immovable, left behind by her deceased daughter and the steps taken by the respondent to transfer due share in such properties in favour of the minor children; I.A.No.1844 of 2015 [Ext.P2(b)] to give her interim custody of the minor children till the final disposal of O.P.(G&W)No.1097 of 2015; and I.A.No.1845 of 2015 [Ext.P2(c)] seeking an order of injunction restraining the respondent from removing the minor children from the jurisdiction of the Family Court, Thiruvananthapuram.

3. On receipt of notice in Ext.P1 original petition and Exts.P2(a) to P2(c) interlocutory applications, the respondent entered appearance and filed counter affidavits in the interlocutory applications. The respondent filed Ext.P3 counter affidavit in Ext.P2(b) application and Ext.P3(a) counter affidavit in Ext.P2(c) application. The petitioner has also filed Exts.P4 and P4(a) reply affidavits.

4. By the impugned order, the Family Court allowed in

O.P.(FC)No.497 OF 2015

3

part I.A.No.1750 of 2015, by directing the respondent to make necessary arrangements at the visitors room in Air Force Station, Akkulam for permitting the petitioner to visit the minor children on every second Saturday, in between 10.00 a.m and 11.00 a.m. It was also made clear that, if the petitioner finds any difficulty or inconvenience to visit the children at the Air Force Station, Akkulam, she will be at liberty to approach the Court for suitable modification in her visitation right. The Family Court dismissed I.A.Nos.1756 of 2015, 1844 of 2015 and 1845 of 2015 stating various reasons. It is aggrieved by Ext.P12 common order passed by the Family Court, the petitioner is before this Court in this O.P.(FC) filed under Article 227 of the Constitution of India.

5. We heard the arguments of the learned counsel for the petitioner.

6. The petitioner is the maternal grandmother of the minor children, viz., Sreya L.S.Nair and Avinash L.S.Nair. The elder child Sreya L.S.Nair aged 7 years is studying in Kendriya Vidyalaya, Air Force Station, Akkulam and the younger child Avinash L.S.Nair is now aged 1 year. The petitioner's daughter Lekshmi S.Nair, who was working as Squadron Leader in Air

Force Station, Agra died on 23.10.2014 at Army Hospital (R&R), New Delhi. The respondent was also working as Squadron Leader in Air Force Station, Agra and was staying in the Air Force Quarters along with his wife and children.

7. The petitioner suspects some foul-play in the death of her daughter and according to her the respondent might have played a role in that incident. The petitioner would contend that, immediately after the death of Lekshmi, the respondents took hasty steps to get all financial benefits on account of her death in his name. At first, the respondent removed the elder child from the custody of the petitioner. Thereafter, on 03.05.2015 the respondent took away the younger child without the knowledge or consent of the petitioner to an unknown destination. According to the petitioner, the nature of employment of the respondent is not favourable to give him custody of the minor children. Further, the mother of the respondent is quite unfit to look after them since she is illiterate and having bad habits.

8. Before the Family Court, the respondent contended that, the petitioner concocted false stories against him, at the instigation of her second husband, her elder daughter and

O.P.(FC)No.497 OF 2015

5

husband, who are interested only in the monetary benefits, payable on account of the death of Lekshmi. According to the respondent, the petitioner was not ready to take care or look after the new born baby and she had even made a comment, looking at the new born baby that, she does not want to see the face of the child who killed his mother. The respondent contended further that, the second husband of the petitioner demanded that, 1/3rd of the death benefits of Lekshmi should be deposited in the name of the petitioner and a further sum of Rs.20 lakhs should be deposited in her account to pay off the liabilities of her elder daughter. When the situation became worse, the respondent shifted residence to his quarters at Air Force Station, Akkulam on 3.5.2015, along with his children. Thereafter, his in-laws became inimical and filed false complaints alleging acts of forgery in the transfer of ownership of a car owned by her late wife, which resulted in registration of a crime against him, vide FIR No.515 of 2015 of Kazhakoottam Police Station.

9. Since O.P.(G&W)No.1097 of 2015 is pending final disposal before the Family Court, we are not expressing any opinion on the merits of the rival contentions referred to above,

as borne out from the pleadings on record.

10. The law is well settled by a catena of decisions of the Apex Court that, in proceedings under Article 227 of the Constitution of India, this Court cannot sit in appeal over the findings recorded by the lower Court or Tribunal and the jurisdiction of this Court is only supervisory in nature and not that of an appellate Court. Therefore, no interference under Article 227 of the Constitution is called for, unless this Court finds that the lower Court or Tribunal has committed manifest error, or the reasoning is palpably perverse or patently unreasonable, or the decision of the lower Court or Tribunal is in direct conflict with settled principle of law.

11. In I.A.No.1750 of 2015, the petitioner sought for an order directing the respondent to produce the minor children before the Family Court, in order to have visitation right over the children. The respondent filed counter affidavit stating that, he is staying at Officers Residential Enclave at the Air Force Station, Akulam and the minor children are being looked after by him and his mother. Being an officer of the Indian Air Force, he is having service accommodation with all facilities and amenities, including

children's park, avenues for skill development, etc. The children are living happily in a clean, safe and secure environment and the elder child is studying in the Kendriya Vidyalaya at the Air Force Station, Akulam. The respondent has also stated that, he has no objection whatsoever in the petitioner visiting the minor children either at his quarters or in the reception of the Air Force Station, and that he is ready to make arrangements in the visitors room in the Air Force Station, Akkulam to enable the petitioner to see the minor children as per her convenience and as directed by the Family Court. The respondent has stated further that, it may not be practically possible for him to bring before the Family Court, the elder child aged 7 years, who is studying in the Kendriya Vidyalaya at the Air Force Station, Akkulam and the younger child aged 8 months, who is at the feeding stage.

12. After considering the rival contentions, the Family Court allowed I.A.No.1750 of 2015 in part, directing the respondent to make necessary arrangements at the visitors room in Air Force Station, Akkulam for permitting the petitioner to visit the minor children on every second Saturday, in between 10.00 a.m and 11.00 a.m. The Family Court has also made it clear that,

if the petitioner finds any difficulty or inconvenience to visit the children at the Air Force Station, Akkulam she will be at liberty to approach the Court for suitable modification in her visitation right.

13. The learned counsel for the petitioner would contend that, by passing the impugned order, based on the concession granted by the respondent, the Family Court has lowered the status of the petitioner as that of a mere spectator who goes to an opera house to see a show for an hour, on the strength of a concession granted by its manager. The learned counsel would contend further that, the Family Court failed to appreciate the feelings of a grandmother to see the minor children of her deceased daughter and there is nothing wrong in bringing the minor children the Court premises on every second Saturday.

14. It is well settled that, in a case for custody of minor children, the paramount consideration of the Court exercising 'parens patriae' jurisdiction shall be the welfare of the children. The Court, while dealing with the question of custody of the minor children, is neither bound by statutes nor by strict rules of evidence or procedures nor by precedents. In selecting a proper

guardian for a minor, the paramount consideration should be the welfare and well-being of that child and the Court should handle such issues with love, affection and sentiments, by applying a human touch to the issues before it. Therefore, the paramount consideration of the Court exercising 'parens patriae' jurisdiction, while deciding the question of custody of the minor children, is their welfare and well-being and not the rights of their parents or grandparents who are at loggerheads with each other.

15. It is also well settled that, all orders relating to custody of the minor children from their very nature must be considered to be temporary orders made in the existing circumstances. With the changed conditions and circumstances, including the passage of time, the Court is entitled to vary such orders, if such variation is considered to be in the interest of the welfare of the minor children. The orders relating to custody of minor children, even when based on consent, are liable to be varied by the Court, if their welfare demands such variation.

16. Therefore, the right of the petitioner to have visitation right over the minor children of her deceased daughter is not an absolute or unbridled right. When the paramount consideration of

the Court exercising 'parens patriae' jurisdiction, on the question of custody or visitation right, is the welfare and well-being of the minor children and not the right of their grandmother, who is at loggerheads with their father, the petitioner has absolutely no legal right to insist that the minor children should be brought to the Court premises itself on every second Saturday in order to have her visitation right. It was after taking note of all attendant circumstances, the Family Court came to the conclusion that, the petitioner can have visitation right over the minor children of her deceased daughter, at the visitors room in Air Force Station, Akkulam on every second Saturday, in between 10.00 a.m and 11.00 a.m. The Family Court has also made it clear that, if the petitioner finds any difficulty or inconvenience to visit the children at the Air Force Station, Akkulam she will be at liberty to approach the Court for suitable modification in her visitation right. While passing such an order, in exercise of the 'parens patriae' jurisdiction, the Family Court has not committed any manifest error of law and the reasoning of the Court in the said order is neither perverse nor patently unreasonable, warranting an interference of this Court in exercise of the supervisory

jurisdiction under Article 227 of the Constitution of India.

17. In I.A.No.1756 of 2015, the petitioner sought for an order directing the respondent to furnish the details of properties, both movable and immovable, left behind by her deceased daughter and the steps taken by the respondent to transfer due share in those properties in favour of the minor children. Admittedly the respondent is the natural guardian of the minor children. Being the natural guardian of the minor children, it is up to the respondent to make necessary arrangements with respect to the property left behind by his deceased wife. As noticed by the Family Court, even the petitioner would admit that the amount received towards insurance coverage of the deceased has already been deposited in the name of the minor children. On the basis of the mere assertions made in the affidavit accompanying the interlocutory application, the petitioner is not entitled for an interim order directing the respondent to furnish the details of the properties left behind by her late wife and the steps he has taken to transfer due share in those properties in favour of the minor children. In I.A.No.1756 of 2015 the petitioner has also sought for the details of the persons appointed to look after the

minor children and also the place where the children are residing at present. The Tribunal held that, in view of the averments in the counter affidavit that, the minor children are being looked after by the respondent and his mother at the Officers Residential Enclave at Air Force Station, Akkualm no further information in this regard is required to be furnished. In such circumstances, the Family Court cannot be found fault with in dismissing I.A.No.1756 of 2015.

18. The petitioner has filed I.A.No.1844 of 2015 seeking an order to give her interim custody of the minor children till final disposal of O.P.(G&W)No.1097 of 2015 and the relief sought for in I.A.No.1845 of 2015 is an order of injunction restraining the respondent from removing the children from the jurisdiction of the Family Court, Thiruvananthapuram. When the minor children are in the custody of the respondent, who is their natural guardian, the petitioner, who is only their maternal grandmother, cannot insist that she should be given interim custody of the children till final disposal of the O.P.(G&W). The mere fact that, based on a complaint made by the second husband of the petitioner a crime has been registered against the respondent

alleging forgery in respect of transfer of a motor car owned by his deceased wife, is not a valid ground to deny the respondent his legal right as natural guardian to have custody of his minor children.

19. The petitioner would also contend that, the respondent being an officer in the Indian Air Force is likely to be transferred to far away places including border areas, in which event the welfare of the minor children will be in peril. As such, it is not safe to entrust custody of the minor children to the respondent. The respondent, who is working as Squadron Leader in the Indian Air Force, which is the air arm of the Indian armed forces playing a crucial role in ensuring the security and peace of our nation, is bound to serve in any part of the nation. However, the legal right of the respondent as natural guardian to have custody of his minor children cannot be curtailed or denied on the sole ground that he is a member of the Indian armed forces, who is bound to serve in any part of the nation, including border areas. In the event of any such transfer and consequential shifting of residence, the respondent is legally entitled to take the minor children along with him. The petitioner, who is the maternal

grandmother of the minor children has no legal right to insist that on such transfer she should be given custody of the children. In that view of the matter, the Family Court cannot be found fault with in dismissing I.A.Nos.1844 of 2015 and 1845 of 2015. While passing such an order, in exercise of the 'parens patriae' jurisdiction, the Family Court has not committed any manifest error of law, warranting an interference of this Court under Article 227 of the Constitution of India.

We find absolutely no grounds to interfere with Ext.P12 common order passed by the Family Court. In the result, the petitioner is not entitled for any of the reliefs prayed for in the O.P.(FC) and the same is accordingly dismissed. No order as to costs.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K. NARENDRA,
JUDGE