

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

OP (FC).No. 511 of 2015 (R)

(AGAINST THE ORDER DT.14.9.2015 IN I.A.63/15 IN O.P.396/14 ON THE FILES
OF THE FAMILY COURT, KASARGODE)

PETITIONER(S) :

JALEEL AGED 37 YEARS
S/O.LATE MAMMU, RISHAL MAHAL, VALIYAVALLAPPU
KUNHIL, MORGAL PUTHUR, KASARAGOD DISTRICT
PIN-671 124.

BY ADVS.SRI.SALIM V.S.
SRI.H.NUJUMUDEEN

RESPONDENT(S) :

THAHIRA
THAHIRA, AGED 32 YEARS, D/O.LATE C.KUNHAMU
RISHAL MAHAL, VALIYAVALLAPPUY, KUNHIL
MORGAL PUTHUR, KASARAGOD DISTRICT, PIN-671 124.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 02-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 511 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1-TRUE COPY OF THE ORDER IN IA.537/2014 IN O.P.396/2014 OF FAMILY
COURT, KASARAGOD.

EXT.P2-TRUE COPY OF THE ORDER IN IA.538/2014 IN O.P.396/2014 OF FAMILY
COURT, KASARAGOD

/true copy/

P.S. TO JUDGE.

s1.

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

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O.P.(FC)No.511 of 2015

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Dated this the 2nd day of November, 2015.

JUDGMENT

Abdul Rehim, J.

1. Parties in this original petition are husband and wife, who are living separated. According to the petitioner, the marriage stands dissolved through 'Talaq' pronounced. There are two children born out of the wedlock, namely Ahamed Rishal Roshan, aged 14 years and Muhammed Shaimal Rinaz, aged 9 years. The respondent herein filed O.P.396 of 2014 before the Family Court, Kasargode seeking permanent custody of the children by impleading the petitioner herein and some of his relatives as respondents. The petitioner had married another lady and is now living with her in Dubai. Since the

date of separation, the minor children are in the custody of the petitioner. Along with the original petition the respondent herein had filed I.A.No.537 of 2014 seeking temporary injunction restraining the petitioner from removing the children outside the country, which was granted by the Family Court. Ext.P1 order passed on 4.11.2014 in I.A.No.537 of 2014 would indicate that an interim injunction was granted by the Family Court and it was extended until further orders. The respondent had also filed I.A.No.538 of 2014 seeking interim custody of the minor children, which was allowed through Ext.P2 order passed by the Family Court, permitting the petitioner to have custody of the children on every weekend from Saturday evening to Monday morning, subject to condition that the children should be put to the 'Madrassa' on Sundays. Ext.P2 order was passed on 1.12.2014. Thereafter the petitioner took the children to Dubai during vacation. Challenging that the respondent had approached this court in O.P.(FC)No.176 of 2015. The said case was disposed of through Ext.P3 judgment observing that the children were already

brought back and admitted in a school at Kasargode from 1st June, 2015 onwards, and that the petitioner has no objection in allowing temporary custody to the respondent as ordered in Ext.P2. However, liberty was reserved to the respondent to move the Family Court in case the petitioner herein violates the arrangement of interim custody made through Ext.P2.

2. It is stated that, thereafter the children were produced before the Family Court and that court had permitted custody of the children to the respondent herein from 26.6.2015 till 13.7.2015. Thereafter the respondent filed I.A.No.63 of 2015 seeking direction to the petitioner to surrender the passport of the minor children before the Family Court, raising apprehension that the petitioner may take the children abroad in order to escape from further proceedings of the court. The Family Court issued a direction in I.A.No.63 of 2015 for surrendering the Passports of the minor children. According to the petitioner, he had surrendered the Passports before the Family Court on 15.7.2015. Thereafter the petitioner herein filed I.A.No.125 of

2015 before the Family Court seeking modification of the order passed in I.A.No.63 of 2015 and to return the Passports of the minor children, stating the reason that he had made all arrangements for securing admission for the children in a prestigious school at Dubai. It was contended that, considering the bright future of the children, they should be allowed to continue their education at Dubai. The said I.A.125 of 2015 filed by the petitioner was dismissed by the Family Court through Ext.P4 order, observing that an injunction restraining the petitioner from taking the children abroad is still in force and that the present application is filed only to circumvent the said order of injunction. Further, the Family Court observed that, the attempt of the petitioner is to disturb the arrangement of temporary custody given to the respondent during weekends. Noticing that the petitioner had violated the interim injunction and had taken the minor children abroad on an earlier occasion and that the respondent had approached this court in an original petition, it is found that the intention of the petitioner is only to take the children away from the

mother, in order to defeat her legitimate rights. Hence the Family Court declined to release the Passport. It was found that by allowing the petitioner to take the children abroad, the very purpose of the original petition which is pending before the Family Court itself would be defeated. It is also found that study of the children abroad under the care of the 2nd wife of the petitioner would not be healthy. Shifting of the children, who are at present studying in a good school in the native place, would not augment the welfare of the children, is the findings arrived.

3. Learned counsel for the petitioner contended that, while passing the impugned order the court below had failed to ascertain the wish and will of the children and also failed in considering the better future and welfare of the children, which should have been given paramount consideration. It is also contended that even if the children were permitted to be taken to Dubai, the respondent could have provided access during the vacation time in July and August of every year, when the children can be brought back to Kasargode.

4. While evaluating the contentions raised, we are of the opinion that the court below had not committed any error of jurisdiction. Evidently, the case instituted under the Guardian and Wards Act with respect to paramount custody of minor children is pending disposal before the Family Court. At that time, if the petitioner is permitted to take the children abroad on a permanent basis and to admit them at a school in Dubai, definitely it will defeat the interest of the respondent, who is the petitioner before the Family Court. Further, we take note of the fact that an interim arrangement with respect to temporary custody had already been made and there exists no substantial change of circumstance, which warrants modification of such an arrangement. It is also to be noted that an interim injunction restraining the petitioner from taking the children abroad is pending in the case instituted before the Family Court. Therefore the court below was fully justified in declining the request for release of Passports.
5. Under the above mentioned circumstances, we do not feel that

invocation of the supervisory jurisdiction vested on this court is warranted on the circumstances of the case. Hence the original petition fails and the same is hereby dismissed.

6. However, we make it clear that, the above judgment will not preclude the petitioner from approaching the Family Court seeking modification of the interim arrangement, if there is any substantial change of circumstance. So also it will be left open to the petitioner to approach the Family Court seeking for an early disposal of the matter. Needless to observe that, if the parties are co-operating for an early disposal of the case before the Family Court, that court will take all earnest endeavour to dispose of O.P.396 of 2014 at the earliest possible.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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