

**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 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937**

**OP (FC).No. 583 of 2015 (R)**  
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**AGAINST THE ORDER DATED 18-08-2015 IN IA No.629/2015 IN OP 477/2014  
OF FAMILY COURT, THALASSERY**

**PETITIONER:**  
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**GEETHUKRISHNA,  
AGED 28 YEARS, W/O. PRAMOD,  
SALES GIRL, RESIDING AT KUYENCHERICHAL  
THALASSERY TALUK, KANNUR DISTRICT.**

**BY ADVS.SRI.P.SAJU  
SRI.R.SUDHEER  
SMT.REKHA C.NAIR  
SRI.R.PRATHEESH (ARANMULA)**

**RESPONDENTS:**  
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**PRAMOD  
S/O. GOPALAN, AGED 34 YEARS,  
RESIDING AT CHUNDIYIL HOUSE,  
P.O.MANANTHERI, THALASSERY TALUK,  
KANNUR DISTRICT, PIN - 670101.**

**BY ADV. SRI.SATHEESHAN ALAKKADAN**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 21-12-  
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**AMG**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- P1 - TRUE COPY OF THE COMMON JUDGMENT DT. 29.4.2015 IN OP NO. 416/2013 AND M.C NO. 249/2013 OF THE FAMILY COURT, THALASSERY.**
- P2 - TRUE COPY OF OP NO. 477/2014 FILED BY THE RESPONDENT HEREIN BEFORE THE FAMILY COURT THALASSERY UNDER SECTION 25 OF GUARDIAN AND WARDS ACT.**
- P3 - TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN THE ABOVE O.P.**
- P4 - THE CERTIFIED COPY OF THE DT. 07.8.2015 IN IA NO. 629/2015 IN OP NO. 477/2014.**
- P5 - CERTIFIED COPY OF THE MODIFIED ORDER DT. 18.08.2015 IN IA NO. 629/2015 IN OP NO. 477/2014.**
- P6 - TRUE COPY OF PRESCRIPTION OF MEDICINE ISSUED BY DOCTOR ON 29.11.2015.**
- P7 - TRUE COPY MEDICAL CERTIFICATE DT. 07.12.2015.**

**RESPONDENTS' EXHIBITS**

NIL

True copy

P.A. To Judge

**C.K. ABDUL REHIM, J.  
&  
MARY JOSEPH, J.**

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**O.P (FC) No. 583 OF 2015**  
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DATED THIS THE 21<sup>st</sup> DAY OF DECEMBER, 2015

**J U D G M E N T**

C.K. Abdul Rehim, J:

In this original petition filed under Article 227 of the Constitution of India, the petitioner is challenging Exts.P4 & P5 orders passed by the Family court, Thalassery in IA No.629/2015 in OP No.477/2014.

2. The original petition before the Family Court was filed by the respondent herein seeking permanent custody of the minor child born out of the wedlock between the petitioner and the respondent, who is now aged 4½ years. The respondent had filed IA No.629/2015 seeking interim custody of the minor, pending disposal of the original petition. The court below had considered the interim application and passed Ext.P4 order on 07-08-2015. The court below observed that, when the case is called the child appeared through the maternal grandmother and the petitioner herein was not available. Subsequently the

petitioner appeared and claimed custody of the child, which was opposed by her mother (the grandmother). The grandmother submitted before the court that due to strained relationship between the spouses the mother of the child is not in picture, and therefore the grandmother sought custody of the child. On the other hand, the petitioner herein raised a complaint that the grandmother is not allowing her to have access with the child. The respondent herein raised an allegation that the petitioner had eloped with a paramour, while the legal marriage subsisted and she had abandoned the respondent. It is also alleged that she had given birth to another children in the relationship with the paramour, which is aged 30 days as on the date of Ext.P4 order. Allegations regarding relationship with the paramour and with respect to the birth of a new child was admitted by the petitioner. Finding that the mother of the child (the petitioner) is now living under an illegal relationship with another man, the court below found that the welfare of the minor child will not be protected

properly at the hands of the petitioner. The court below also found that the respondent herein has got his mother in the house, who will look after the child. Therefore the court below had arrived at a conclusion that the respondent herein can be preferred than the petitioner, for the purpose of entrusting custody of the child. Hence the child was directed to be handed over to the respondent, on 07-08-2015. Specific direction was issued to the respondent to produce the child on 10-08-2015. It was also directed that, in case there is any difficulties to the child in night hours, the respondent shall inform the petitioner and shall do the needful for the welfare of the child. In obedience to the directions, the child was produced before the court below on 10-08-2015 and the child was given custody to the respondent herein.

3. Evidently, the petitioner had moved for a modification of Ext.P4 order. After fresh consideration of the matter, another order was passed by that court as per Ext.P5. In Ext.P5 the court below considered the fact that

access to the child by the petitioner as well as by the grandmother will be difficult because the child is put in LKG class in a school which is situated at 3 Kms. away from residential house of the petitioner. But the court felt that, for better schooling and welfare of the child and in order to improve the standard of education, it will be fair and reasonable to modify the arrangement of visitation provided on alternate days. Hence the court below had ordered a permanent arrangement for visitation, with consent of both the parties. The maternal grandmother was permitted to take the child from the respondent/father on every Saturdays and Sundays at 9 a.m. and to keep custody of the child till 5 p.m. on the respective days. The petitioner herein was permitted to have access to the child on those two days from the house of the grandmother with a specific stipulation that the paramour of the petitioner should not have any access to the child during such visitation. It is aggrieved by the above said order, this original petition is filed.

4. Learned counsel for the petitioner contended that, the mere fact that another child was born to the petitioner in the relationship with another person, cannot be taken as a ground to deny custody of the child to the petitioner. It is submitted that the child is suffering from urinal disease which is recurring. Proper care and treatment could be available only if the child is permitted to be in the custody of the petitioner herein. Per contra, learned counsel for the respondent contended that there was problem of urinary infection to the child, which was properly taken care by the respondent by consulting with a Urologist attached to the Indira Gandhi Co-operative Hospital.

5. Having considered the rival contentions, this court is of the opinion that, on the factual aspects based on the materials available before the court below, the Family court was perfectly justified in granting interim custody of the child to the respondent/father. More over, proper arrangements for visitation right is provided to the mother and the maternal grandmother. We do not find any specific

reason for interfering with the order impugned in this original petition, that too in exercise of the supervisory jurisdiction vested under Article 227 of the Constitution.

6. Learned counsel for the petitioner submitted that when the child was taken on visitation it is found that the child is suffering from urinary tract infection and got admitted at the Indira Gandhi Co-operative Hospital, Thalassery on 06-12-2015. Exhibits P6 & P7 are produced to show that the child is admitted and is undergoing treatment for urinary tract infection. Exhibit P7 certificate would indicate that the child had such type of infection quiet off and on and it requires continued treatment.

7. When the above case came up for admission on 14-12-2015 this court has passed an interim order staying the operation of Exts.P4 & P5, till 18-12-2015, on the premise that the minor child is admitted in the Hospital. It was made clear that she shall be permitted to have custody of the child till the next posting of the case. Today when the case is taken up it is admitted that the minor child was

discharged from the Hospital on 19-12-2015. We do not find any reason for the petitioner to be permitted to continue with custody of the minor child, contrary to the terms of Exts.P4 & P5 orders.

8. Under the above mentioned circumstances the original petition is hereby dismissed. The petitioner is directed to hand over custody of the child to the respondent forthwith, in compliance of Exts.P4 & P5 orders. It is made clear that both the parties will be at liberty to approach the Family Court seeking modification of the arrangement if there is any substantial change of circumstances in the matter of custody of the child.

9. Having considered the fact that the original petition is of the year 2014 the Family Court will take all earnest endeavour to dispose of the matter at the earliest.

Sd/-

**C.K. ABDUL REHIM, JUDGE.**

Sd/-

**MARY JOSEPH, JUDGE.**

AMG

True copy

P.A. to Judge