

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

OP (FC).No. 147 of 2014 (R)

(I.ANO.2142/2013 IN O.P.No. 593/2010 ON THE FILE OF FAMILY COURT, MALAPPURAM)

PETITIONER/RESPONDENT:

**SALITHA
D/O.SANKARANKUTTY, RESIDING AT 'ROHINI' HOUSE
NARUKARA, MANJERI, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI**

RESPONDENT/PETITIONER:

**MURALEEDHARAN.P.
S/O.SREEDHARAN NAIR
AMMANCHERRY HOUSE, KARAKKUNNU P.O., MANJERI
MALAPPURAM DISTRICT, PIN - 676 123.**

BY ADV. SRI.T.KAJITH KUMAR

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 31-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE AFFIDAVIT FILED BY MOTHER OF THE RESPONDENT IN I.A.NO.2142 OF 2013 IN O.P.NO.593 OF 2010 BEFORE THE FAMILY COURT, MALAPPURAM

EXHIBIT P2 : TRUE COPY OF THE SETTLEMENT ENTERED BETWEEN THE PETITIONER AND THE RESPONDENT IN O.P(G&W) NO.593/10 ON THE FILE OF THE FAMILY COURT, MALAPPURAM

EXHIBIT P3 : TRUE COPY OF THE DEPOSITION GIVEN BY THE PETITIONER BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, MANJERI IN C.C.63 OF 2009

EXHIBIT P4 : TRUE COPY OF THE ORDER DATED 03.05.2013 IN I.A.NO.2600 OF 2011 IN O.P.NO.593 OF 2010 ON THE FILE OF THE FAMILY COURT, MALAPPURAM

EXHIBIT P5 : TRUE COPY OF THE ORDER OF THIS HON'BLE COURT DATED 07.05.2013 IN OP(FC) NO.1674 OF 2014

EXHIBIT P6 : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 21.06.2013 IN OP(FC) NO.1674 OF 2014

EXHIBIT P7 : TRUE COPY OF THE I.A.NO.2142/2013 IN O.P.NO.593 OF 2010 ON THE FILE OF THE FAMILY COURT, MALAPPURAM FILED BY THE RESPONDENT

EXHIBIT P8: TRUE COYP OF THE OBJECTION DATED 07.01.2014 FILED BY THE PETITIONER IN EXT.P7

EXHIBIT P9 : TRUE COPY OF THE COMPLAINT DATED 07.01.2014 SUBMITTED BY THE PETITIONER BEFORE THE SUPERINTENDENT OF POLICE, MALAPPURAM

EXHIBIT P10 : TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.298/14 OF MALAPPURAM POLICE STATION

EXHIBIT P11 : TRUE COPY OF THE ORDER DATED 15.03.2014 IN I.A.NO.2142/2013 IN O.P.NO.593 OF 2010 ON THE FILE OF THE FAMILY COURT, MALAPPURAM

EXHIBIT P12 : TRUE COPY OF THE ACHIEVEMENT RECORD OF KUMARI NAMITHA DURING THE ACADEMIC YEAR 2013-14

RESPONDENT(S)' EXHIBITS

R1(A) COPY OF THE JUDGMENT DTD.22.9.2009 IN O.P.No. 210/2009.

R1(B) COPY OF THE JUDGMENT IN CC 63/2009 OF CJM COURT, MANJERI DTD.17.12.2002.

R1(C) COPY OF THE PROCEEDINGS PAPER IN C.C.No. 63/2009 FROM 28.4.2009 TO 21.11.2012.

R1(D) COPY OF THE RENT AGREEMENT EXECUTED BETWEEN THE landlord AND MURALEEDHARAN.

R1(E) COPY OF THE COMPLAINT DTD.24.2.2013 BEFORE THE S.I. OF POLICE, MANJERI.

R1(F) COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.940/2013 OF MALAPPURAM POLICE STATION.

R1(G) COPY OF THE WOUND CERTIFICATE FROM ORCHID HOSPITAL, MALAPPURAM.

R1(H) COPY OF THE PRINT OUT OF THE MONTHLY ATTENDANCE REPORT FROM 7.1.2014 TO 10.1.2014 IN THE MOTOR VEHICLES DEPARTMENT.

R1(I) COPY OF THE PHOTOGRAPHS OF THE CHILDREN.

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///True copy///

P.S. to Judge

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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O.P.(F.C)No. 147 of 2014

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Dated this the 31st day of March, 2015

J U D G M E N T

ANTONY DOMINIC, J.:

This Original Petition is filed challenging Ext.P-11, an interim order passed by the Family Court, Malappuram in I.A.No.2142/2013 in O.P.No.593/2010.

2. O.P.No.593/2010 was filed by the respondent herein essentially for custody of the two minor children born in his wedlock with the petitioner herein. In that Original Petition, Ext.P-11 order was passed by the Family Court, directing the petitioner to handover the children on every Saturday to the husband. It was also directed that the children shall be returned on Monday morning at 8 a.m.

3. Having heard the counsel for both sides, we are inclined to agree with the learned counsel for the petitioner that the said order does not deal with the contentions of either of the parties. In other words, the order is bad for total non-application of mind and for that reason is liable to be set aside and we do so.

4. In this Court, the respondent has submitted

I.A.No.4058/2015 seeking a direction to the petitioner to give custody of the children to him during the summer holidays. This prayer has been opposed by the petitioner by filing counter affidavit also.

5. We note that pursuant to the order dated 4th of April 2014, the father enjoyed custody of the children during the summer vacation ;last year and he is also enjoying overnight custody on every alternate Sundays. In such circumstances, we see no reason to decline the prayer sought by the father.

6. Therefore, we direct that the petitioner will handover custody of the children to the father at 10 a.m. on 2nd of April, 2015. The children will stay with the husband from 2nd of April 2015 till 5 p.m. on 20th of April 2015 when he shall return the children to the petitioner wife. During this period also, if the wife so desires, the husband will allow her access to the children.

7. We are informed by the wife that during the aforesaid period, the children have to attend the school for a dance practice. We clarify that it will be the responsibility of the husband to see that the children are sent to the school as and when required during the period when he is enjoying their custody.

8. Having set aside Ext.P-11 order and considering the fact that the Original Petition was filed as early as in 2006, we deem it appropriate that the Family Court should expeditiously dispose of the Original Petition itself. Therefore, we direct the Family Court to expedite the disposal of the Original Petition and pass final orders in the matter, at any rate, within four months of receipt of a copy of this judgment, untrammelled by the observations made by this Court. We also clarify that in the meanwhile it will be open to the husband, the respondent herein, to make interlocutory applications for any interim arrangement and if any application is made, the Family Court shall deal with the same in accordance with law.

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Sd/-
ANTONY DOMINIC, JUDGE
Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge