



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 23/2/2015  
C O R A M

**THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA**

WEB COPY

C.R.P. PD(MD) No.476 of 2013

Selvanayagam ... Petitioner

Vs

1. Jeyasree  
2. Kasthuri Rangan  
3. Padmalotchana ... Respondents

Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order made in I.A.No.71 of 2012 in G.O.P.No.121 of 2012 dated 6/2/2013 on the file of the Principal Sub Judge, Thanjavur.

For petitioner ... Mr.M. Suresh Kumar

For respondents ... Mr.A. Rahul

- - - - -

Orders reserved on 4/2/2015

**O R D E R**

The revision petitioner is the father of the minor child, aged about 7 years, seeking interim custody of the child or at least for visitation rights.

2. The marriage between the petitioner and the first respondent was solemnized on 5/7/2004 and the child was born on 12/6/2005. The wife viz., the first respondent had filed H.M.O.P for divorce and the husband has filed G.O.P for restitution of conjugal rights. The first respondent left the matrimonial home in 2011. Till such time, the child was brought up only in the house of the petitioner. Now, after the matrimonial dispute arose between the spouses, the wife of the petitioner/mother of the child has taken the child along with her. Therefore, the petitioner has filed I.A.No.71 of 2012 for the interim custody of the child.

3. The first respondent denied the allegations whatsoever made in the affidavit filed by the petitioner and contended that it will not be safe for the child to be with the father. The Principal Sub-Judge, Thanjavur, who tried the application, dismissed the same on the ground that the child was maintained by the mother for the last seven years and the petitioner had not even stated in the petition that he along with the first respondent maintained the child. Aggrieved by the said order, this Civil Revision Petition is filed by the petitioner/father of the child.

4. Heard the learned counsel appearing for the petitioner and the respondents.

5. The learned counsel appearing for the petitioner contended that the marriage with the first respondent was solemnized on 5/7/2004 with the petitioner and the child was born on 12/6/2005 and the petitioner and



the first respondent were living together till 2011. In fact, the child started going to School when the parents were together. Therefore, the learned Judge was wrong in holding that it was only the mother who has brought up the child. It is not the case of the respondents that she was not living with the husband for seven years from the date of marriage.

6. The other reason assigned by the learned Judge is that the petition was not filed immediately after the first respondent left the matrimonial home. This reason is absolutely unacceptable as the petitioner has already filed an application for restitution of conjugal rights on 2/4/2012 in H.M.O.P.No.33 of 2012. When the first respondent's husband has not only asked for the custody of the child but the family to be united along with the mother, he could not have filed this application for custody immediately. Only after knowing the attitude of the first respondent, he has filed the application for interim custody of the child. There is no specific allegation by the mother of the child/first respondent that the father of the child/petitioner did not take care of the child or if interim custody is given that would endanger the life of the minor child. After all, the petitioner is a natural father of the child and he is entitled to visitation rights at least if not the full custody.

7. Considering the age and the routine of the child, only visitation rights can be granted to the father. The child is a School going one and any visiting rights that may be given to the father would lead to unnecessary friction in the family which would ultimately affect the mind and health of the child. However, the father cannot be deprived of the visiting rights of the child.

8. Considering the age of the child also, the father may be permitted to see the child once in a month during the week ends i.e., on first Sunday of every month between 10.00 a.m., and 12.00 noon. The father is also permitted to see the child on School vacations where the child has got a continuous leave of at least seven days after intimating the same to the mother of child well in advance.

9. To begin with, let the petitioner exercise his visiting rights on the first Sunday of each month. The meeting of the father and the child can happen in any of the public places viz., a temple. The petitioner as well as the first respondent would mutually intimate each other of the visit informing the date and time. In case, for some reason, the child is not available on the first Sunday, the visiting rights can happen on the following Sunday.

10. With the above observation and direction, this Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar

\\True copy\\

Sub Assistant Registrar

To

The Principal Sub-Judge, Thanjavur.

+1 CC TO M/S.M.SURESHKUMAR, ADVOCATE S.NO.8502

+1 CC TO M/S.A.RAHUL, ADVOCATE SR.NO.8146

C.R.P. PD(MD) No.476 of 2013  
23/2/2015