

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.3365 of 2016

ORDER:

Aggrieved by the order of the Court below closing without any further orders, an application for interim custody of the minor child aged about 5 years, the mother has come up with the present Civil Revision Petition.

2. Heard Sri V. Naga Raghu, learned counsel for the revision petitioner and Sri Ramachandra Rao Vemuganti, learned counsel for the respondent.

3. Pursuant to the orders passed on the previous occasion, the parents of the girl as well as the girl child were present in Court. Even the parents of the respondent-husband were present. The second child of the couple, which is a male child and which is in the custody of the mother, was also present.

4. While the wife has filed the Original Petition in O.P.No.622 of 2014 on the file of Judge, Family Court, Vijayawada, under Section 7 to 10 of the Guardians and Wards Act, 1890 read with Section 6 of the Hindu Minority and Guardianship Act, 1956, the respondent-husband appears to have filed a suit for annulment of marriage. It appears that there was a domestic violence petition filed by the petitioner-wife in which the learned I Additional Chief Metropolitan Magistrate had passed an order permitting visitation rights from 8.00 A.M. to 12.00 Noon on Wednesdays and Sundays. The learned Magistrate directed that the interim arrangement should

continue until the disposal of the interlocutory application filed by the wife in her main O.P. This order was accepted by both the parties.

5. Unfortunately, the Family Court has closed the Interlocutory Application without any orders forcing the wife to come up with the above revision petition.

6. The marriage allegedly took place on 02-09-2010. The girl child by name K. Sri Chinvee was born on 12-10-2011. The boy child was born on 26-03-2014.

7. The stand taken by the respondent-husband is that his marriage with the petitioner itself is null and void. This plea is perhaps taken without realization of the fact that the children born out of a marriage, which is a nullity, will give rise to a better claim for the mother rather than for the father. Any way, it is a matter for evidence.

8. Be that as it may, the normal rule is that girl children of this age, should generally be in the custody of the mother. Therefore, if I follow the general rule, it is the petitioner, who should have custody of the minor children, subject to visitation rights of the father. But I do not want to pass such a harsh order. Taking into account the circumstances, I am of the view that at least till disposal of the main O.P., the mother should have custody during week-ends.

9. The law is now well settled that for the overall development of personality of children they need the love, affection and care of both parents. However sinner a mother maybe, she does not lose the right to show love and affection to her children. Therefore, the Civil Revision Petition is disposed of, to the following effect:

- 1) the trial Court shall dispose of the main O.P.No.622 of 2014, either together with O.S.No.704 of 2014 or otherwise, within a period of two (2) months from the date of receipt of a copy of the order; and
- 2) until the disposal of O.P.No.622 of 2014, the petitioner shall have the custody of the girl, on Saturdays and Sundays. The husband shall drop the girl child at the residence of the wife at 9.00 A.M. on Saturday and pick up the child by 6.00 P.M. on Sunday evening.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 18-11-2016

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