



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **13.09.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

C.M.A(MD)No.301 of 2016

and

C.M.P. (MD) .No.4142 of 2016

S.Priya : Appellant/Petitioner/Petitioner

Vs.

V.K.Sundaramoorthy : Respondent/Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under section 19 of the Family Courts Act 1984, to set aside the order dated 30.09.2014, made in I.A.NO.461 of 2014 in H.M.O.P.No.433 of 2013, on the file of the Family Court, Madurai and consequently provide custody of the minor children on every weekends and other miscellaneous holidays.

For Appellant :Mr.S.Veeranasamy
For Respondent :Mr.N.Mohideen Basha

J U D G M E N T

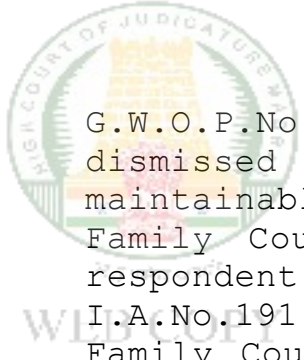
[Judgment of the Court was delivered by **M.M.SUNDRESH,J.**]

This appeal is directed against the order passed in Interlocutory Application, by which the appellant was permitted to be with the minor children on second and fourth sunday of every English calender month. The respondent was directed to hand over the children to the appellant on saturday evening at 6 O' clock and thereafter take them on sunday evening at 5' 0 clock. Even during the quarterly vacation holidays, the same arrangement was directed to be made. Challenging the same, the present Civil Miscellaneous Appeal has been filed.

2.The learned counsel appearing for the appellant would submit that the appellant has sought for custody of minor children on all Saturdays, Sundays and other holidays, which has not been considered by the trial Court. He further submitted that the interest of the children ought not to have seen as against their education. According to the learned counsel for the appellant, the appellant being the biological mother, she is entitled for interim custody of the minor children.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel appearing for the respondent would submit that the earlier petition filed by the appellant in



G.W.O.P.No.8 of 2014 on the file of District Court, Theni was dismissed for default and therefore the present appeal is not maintainable. The minor children on their appearance before the Family Court have also expressed their desire to be with the respondent. In the earlier application filed by the petitioner in I.A.No.191 of 2014, she has been given visitation right by the Family Court. After taking into consideration of the interest of the minors as well as that of the petitioner, the Family Court has rightly passed the order and therefore, no interference is required.

4.Admittedly, the minor children are at present with the respondent. Even in the earlier order passed, the petitioner was not given complete custody. Considering the above, the Court below by way of interim arrangement has passed an equitable order. While passing the aforesaid order, the Court below has taken into consideration of the fact that the children are attending school under the custody of the respondent. The petitioner is residing at Madurai, whereas the respondent is residing at Theni District. Therefore, it is not possible to make the children to travel very often as it might affect their education. The learned Judge has passed only interim order. If the children feel comfortable with the appellant, she can file appropriate application at a later point of time. In such view of the matter, this Court does not find any merits in this appeal.

5.Accordingly, this Civil Miscellaneous Appeal is dismissed. However, it is made clear that the respondent shall cooperate and comply with the direction of the Court below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Judge,
Family Court, Madurai.

+1cc to Mr.N.Mohideen Basha, Advocate in SR.No.78713

Tsg

AE/MR KKR/SAR1/28.09.2017/2P/3C

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