



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2017

CORAM:

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P. (PD) (MD) No.244 of 2016
and
CMP (MD) Nos.1006 & 3468 of 2016

Deivam

... Petitioner/1st Respondent/
Petitioner

Vs.

1.C.Sivashanthi,

...1st Respondent / Petitioner/
1st Respondent

2.S.Manikanda Thevan

...2nd Respondent / 2nd Respondent
2nd Respondent

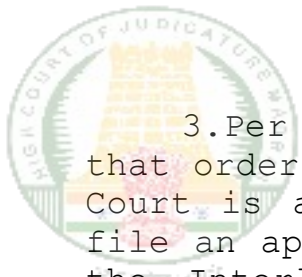
Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 01.12.2015 made in I.A.No.325 of 2015 in H.M.O.P.No.207 of 2015 on the file of Family Court, Madurai.

For Petitioner : Mr.R.Gandhi
For Respondents : Mr.M.Muthusamy

O R D E R

This Revision Petition is directed against the order passed by the Family Court in I.A.No.325 of 2015, dated 01.12.2015 filed by the first respondent / wife, seeking Interim custody of the child. The Family Court has passed an order in that application permitting the first respondent / wife to visit her son every month on last Saturday and Sunday at School premises and also granted Interim Custody for three days during half-yearly holidays and seven days during annual holidays.

2.Aggrrieved by the said order, the petitioner / husband has preferred this revision petition on the ground that the first respondent herein is not the person of worthy character and criminal cases have been filed against her for eloping with her husband. Therefore, giving custody of the child to her is not the best interest of the child.



3. Per contra, the learned counsel for the respondent submitted that order passed in the Interlocutory Application by the family Court is an appealable order and the revision petitioner has to file an appeal, if at all he is aggrieved by the order passed in the Interlocutory Application in I.A.No.325 Of 2015. Invoking article 227 is not warranted and the Revision Petition filed under Article 227 of the Constitution of India is not maintainable.

4. This Court, on perusal of the impugned order, finds that the learned Family Court Judge has passed the impugned order, only on perusal of records and on hearing the parties, but miserably failed to interact with the minor boy, whose custody is under litigation. On the date of passing of the impugned order, the boy was seven years old and now nine years old, studying in Mont Ford International Residential School, Yercaud at fifth standard. In all fairness, the learned Judge, ought to have interaction with the minor boy to ascertain his willingness. However, without ascertaining the wish of the minor boy, the impugned order has been passed. Therefore this Court is constrained to interfere with the order passed by the Family Court, under Article 227 of the Constitution of India.

5. Accordingly, the revision petition is allowed, the order passed by the Family Court in I.A.No.325 of 2015 dated 01.12.2015 is set aside. The application in I.A.No.325 of 2015 in H.M.O.P.No.207 of 2015 is remanded back to the Family Court for a fresh consideration and necessary order shall be passed, after hearing the minor boy. It is also desirable to give quietus to the main Matrimonial Dispute itself. Therefore, the family Court is directed to dispose of H.M.O.P No.207 of 2015, on the file of Family Court, Madurai as expeditiously as possible, without any undue delay. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

The Family Court Judge, Family Court,
Madurai.

+One cc to Mr.R.Gandhi, Advocate, SR.No.60254

+One cc to Mr.A.Mithun Chakravarthi , Advocate, SR.No.60341

dss/km

RL/4C/2P/KP/SAR1/23/6/2017

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