

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

AND

THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Habeas Corpus Petition No.1222 of 2018

Nagarajan ... Petitioner /
Father of the detenues
versus

1. The Inspector of Police,
C-3 Seven Wells Police Station,
155/88 Amman Koil Street,
Seven Wells, Chennai 600 001

2. N.Rajeswari ... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a direction to direct first respondent to produce the body of the person of the petitioner's minor children, namely, N.Sai Balaji, aged about 17 years and N.Prabhu Ram, aged about 13 years, before this Court from the illegal custody of the second respondent and hand over the minor children to the petitioner.

For Petitioner : Mr.C.P.Hem Kumar, for,
M/s.Ganesh and Ganesh

For Respondents : Mr.R.Prathap Kumar, APP., for R-1

O R D E R

(Order of the Court was made by S.Vimala, J.,)

This Habeas Corpus Petition has been filed by the father of the detenues seeking a direction to the first respondent to produce the custody of the two children, by names, Sai Balaji, aged about 17 years and Prabhu Ram, aged about 13 years.

2. It is the case of the petitioner that the petitioner / father has a legal right to have free and fair access to the children and the petitioner is the natural guardian of the children and therefore, he is entitled to see the children.

3. This Court is of the opinion that the right of the father as the natural guardian to have free and fair access to the children cannot be disputed by anybody. However, the fact remains that the dispute is between the petitioner and the second respondent, which resulted in the grant for a decree of divorce, dated 18.12.2011 in the petition filed in HMOP No.157 of 2005. Admittedly, the wife and the children are away from the husband for a period of 13 years and one of the child is about 13 years and that child would not even know that the petitioner herein is the father for him.

4. Further, the fact remains that, seeking permanent custody O.P.No.517 of 2012 is pending before the competent Civil Court. If at all the whereabouts of the children are not known to the petitioner herein, it is open to the petitioner to move the Court, which is hearing O.P.No.517 of 2012 and that would be an appropriate step. In any event, the custody of the children with the second respondent that too for a continuous and long period of thirteen years cannot be said to be an illegal custody. Therefore, without exercising the right to move the Court, which is dealing with the custody and guardianship issue, it is not appropriate for the petitioner to file this petition before this Court.

5. With the above observations, this Habeas Corpus Petition is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Inspector of Police, C-3 Seven Wells Police Station, 155/88 Amman Koil Street, Seven Wells, Chennai 600 001.
2. The Public Prosecutor, High Court, Madras.

+1cc to M/s.Ganesh and Ganesh, Advocate, S.R.No. 41851

H.C.P.No.1222 of 2018

CA(CO)
BM 13/07/2018