

A.No.7105 of 2019 in
O.P.No.599 of 2018

K.KALYANASUNDARAM., J

This application has been filed for grant of temporary custody of the minor child, viz., Priyanka to the applicant-mother, by handing over custody of minor child from the respondent to the applicant and permit her to take the minor child to her residence at Bangalore for a period of one week between 23.09.2019 and 02.10.2019.

2. O.P.No.599 of 2018 is filed to appoint the applicant as a sole guardian of her daughter Minor-Priyanka. The petitioner and the respondent are husband and wife and during the lawful wedlock, two children were born to them, viz., Priyanka, aged 13 years and Anamika, aged 6 years. The applicant would state that her younger daughter is under her custody in Bangalore and the elder daughter-Priyanka was forcibly and illegally removed from her custody by the respondent in October 2017.

3. The applicant would further state that a visitation right has been granted by an order dated 15.03.2019 and as per the order, she has travelled along with her younger daughter and visited Priyanka 11 times in

Coonoor. The visitation trips have been day visits and the minor child Priyanka will head back to the Coonoor residence with her father at the end of the day. The School in Coonoor has Dussehra Holidays from 23.09.2019 to 02.10.2019 and it would be in the interest and welfare of the minor child to spend a week in Bangalore with the applicant and with her younger sister.

4. In the counter filed by the respondent, the allegation of the applicant that the respondent removed the elder child in the month of October 2017, is denied as baseless. It is further stated that, it was due to stern stand taken by the minor child Priyanka to stay with the respondent, made the applicant to hand over the child to him. The Child Welfare Committee, The Nilgiris District, in their report dated 22.11.2017 has stated that *"the girl expressed her whole-hearted willingness to us to remain with the father and pursue her studies in the Riverside Public School, where she was studying earlier"*. In paragraph Nos.10 and 11 of the counter, it is stated that the minor child-Priyanka has been short-listed for the Tamil Nadu under 13 (age group) State Level Cricket Team and she is currently undergoing Cricket Coaching in the Nilgiris District Sports Stadium on week days and in Coimbatore District Stadium on weekends. The schedule of her Cricket training is mentioned as below:-

<i>Days</i>	<i>Timings</i>	
	Morning	Afternoon
Monday to Thursday	10.00 a.m. - 12.00 noon	3.00 p.m. to 5.00 p.m.
Friday to Sunday	09.30 a.m. to 05.00 p.m.	

5. It is further stated that the minor child-Priyanka also undergoes Guitar music class, organized by the London School of Music in collaboration with the DPS Music Academy, Coimbatore and attends the classes on all days of the week between Monday to Friday from 06.00 p.m. to 07.30 p.m., including Dussehra Holidays. Further, she also undergoes a Technical Evaluation Test on her Cricketing skills, conducted by Asan Memorial School, Chennai during October 2019. In case, such temporary custody is thrust upon the minor, she would feel completely dejected and let down for unable to continue with her coaching and training sessions, which would make her chances of winning the competitions / exams bleak. In paragraph No.14 of the counter, it is stated that during Dussehra Holidays, the applicant can consider staying at Coonoor with minor child Priyanka, without hampering the above training programs and that the minor child-Priyanka has apprehensions towards staying with her mother at Dussehra Holidays, as she is feeling insecure due to improper behaviour shown by the applicant against the minor child in the past.

6. A Memorandum, 26.09.2019, has been filed by the applicant, wherein, it has been stated as follows:-

"2. In the light of certain logistical difficulties regarding the minor child Priyanka's travel to Bangalore in the light of her extra-curricular activities in Coonoor, the applicant undertakes to travel to Coonoor for a period of 4 days and spend time with the minor child Priyanka, from the morning of 05.10.2019 to the morning of 09.10.2019. The applicant, along with her younger daughter Anamika, will stay with the minor child Priyanka at Albert Guest House and Resort, Brooklands, Coonoor.

3. The applicant undertakes to pick up the child on 05.09.2019 in the morning from the respondent's residence in Coonoor and return custody of the child in the morning on 09.09.2019.

4. The minor child Priyanka will spend time exclusively with the applicant mother and younger sister, Anamika.

5. The applicant undertakes that the minor child Priyanka's extra-curricular activities in Coonoor will not be affected, and the applicant will ensure that she is able to attend all her classes."

7. The learned counsel for the applicant by placing reliance on the decisions reported in the case of *Thrity Hoshie Dolikuka Vs. Hoshiam Shavaksha Dolikuka* [(1982) 2 SCC 544], *Vivek Singh Vs. Romani Singh* [(2017) 3 SCC 231], *Sheila B Das Vs. PR Sugasree* [(2006) 3 SCC 62] and the judgment of this Court in O.S.A.No.405 of 2012, dated 08.01.2018, argued that the applicant is entitled for interim custody and the apprehension of the minor child will have no bearing to decide the issue involved in this application.

8. *Per contra*, the learned counsel for the respondent submitted that the decision relied upon by the learned counsel for the applicant need not be considered at this juncture and those decisions can be rendered at the time of final disposal of the cases. I find force in the submission of the learned counsel. He further added that in 2017, the Child Welfare Committee, The Nilgiris District, enquired the minor child-Priyanka on many occasions and thereafter, gave a report dated 22.11.2017, categorically stating that the minor child had expressed her whole-hearted willingness to remain with her father. It is further stated that the apprehension of the minor child to stay exclusively with the applicant is genuine and the

respondent has no objection for the applicant to come over to Coonoor to have interim custody of the minor child Priyanka along with her father without affecting her schedule of Cricket Coaching and guitar music classes.

9. Heard the rival submissions and perused the record.

10. It is seen that on 15.03.2019, this Court, by consent of the parties granted visitation right to the parents from 01.00 p.m. to 05.00 p.m., on 1st and 3rd Saturday of every month from the month of April 2019. The time schedule mentioned in the counter affidavit for Cricket Coaching and guitar music class of the minor child-Priyanka is not disputed by the applicant. In the Memo, dated 26.09.2019, the applicant has given up her prayer to take the minor child to Bangalore and also she wanted the interim custody only at Coonoor without affecting the minor Priyanka's extra-curricular activities. The respondent has no serious objections for grant of interim custody of 4 days to the applicant, without affecting the schedule of Cricket Coaching and guitar music class of the minor child and the respondent wanted his presence at the time of interim custody of the minor child to the applicant.

11. The minor child-Priyanka appeared before this Court on 25.09.2019 and reported that the exclusive interim custody sought for by the applicant would affect her training programme and she also insisted the presence of her father during the interim custody.

12. In the light of the above facts and also considering the welfare of the minor child, it is appropriate to permit the applicant to have interim custody of the minor child-Priyanka from 05.10.2019 to 09.10.2019, without affecting her extra-curricular activities. It is made clear that during the interim custody of the minor child, her father is also permitted to stay with them. The application is ordered accordingly.

03.10.2019

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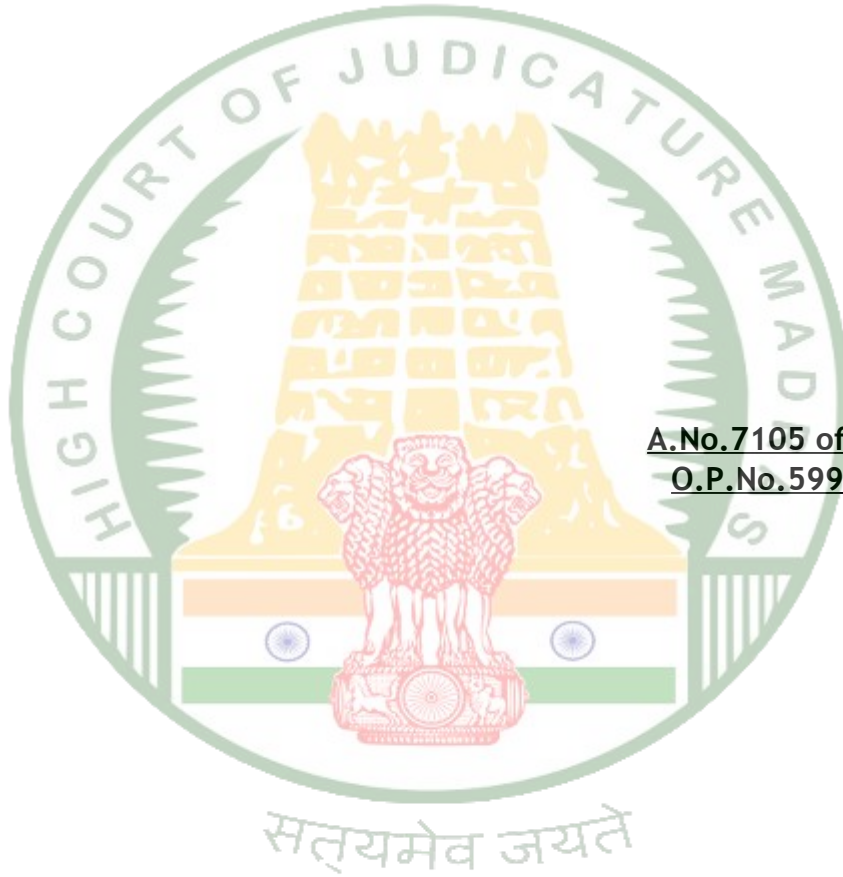
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