



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD) (PD)Nos.1535, 1536 and 1537 of 2018  
and

C.M.P. (MD)Nos.6694 and 6695 of 2018

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**C.R.P. (MD)No.1535 of 2018**

P.Sivakumar : Petitioner/Petitioner/Petitioner

.. Vs ..

Vembu : Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 01.03.2018 passed in I.A.No.19 of 2018 in G.W.O.P.No.23 of 2017 on the file of the Family Court (District Judge), Tiruchirappalli and allow the present Civil Revision Petition.

**C.R.P. (MD)No.1536 of 2018**

P.Sivakumar : Petitioner/Petitioner/Petitioner

.. Vs ..

Vembu : Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 01.03.2018 passed in I.A.No.41 of 2018 in G.W.O.P.No.23 of 2017 on the file of the Family Court (District Judge), Tiruchirappalli and allow the present Civil Revision Petition.

**C.R.P. (MD)No.1537 of 2018**

P.Sivakumar : Petitioner/Petitioner/Petitioner

.. Vs ..

Vembu : Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 11.01.2018 passed in I.A.No.351 of 2017 in G.W.O.P.No.23 of 2017 on the file of the Family Court (District Judge), Tiruchirappalli and allow the present Civil Revision Petition.



For Petitioner : M/s.J.Anandhavalli  
in all the cases  
For Respondent : Mr.R.Sundar  
in all the cases

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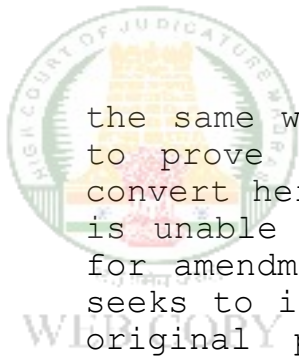
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**COMMON ORDER**

The petitioner in all the three cases is the husband and the respondent is the wife. C.R.P.(MD)No.1535 of 2018 is directed against the order passed in I.A.No.19 of 2018 in G.W.O.P.No.23 of 2017 on the file of the District Judge (Family Court), Tiruchirappalli. C.R.P.(MD)No.1536 of 2018 is directed against the order passed in I.A.No.41 of 2018 in G.W.O.P.No.23 of 2017 on the file of the District Judge (Family Court), Tiruchirappalli. C.R.P.(MD)No.1537 of 2018 is directed against the order passed in I.A.No.351 of 2017 in G.W.O.P.No.23 of 2017 on the file of the District Judge (Family Court), Tiruchirappalli.

**C.R.P. (MD)No.1535 of 2018**

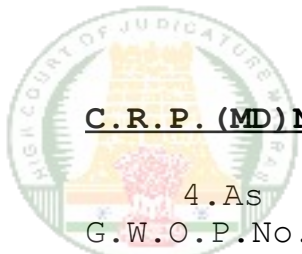
2.The revision petitioner/husband as well as the respondent/wife appears to have filed independent applications for guardianship of the minor children who born out of the wedlock between the petitioner and the respondent. The revision petitioner filed G.W.O.P.No.23 of 2017 for custody of the minor children. Similarly, the respondent/wife filed G.W.O.P.No.12 of 2017 claiming guardianship over the minor children. It is admitted that the custody of the minor children are at present with the wife who is the respondent in all these Civil Revision Petitions. As stated earlier, the petition filed by the husband is for guardianship and custody of the minor children in G.W.O.P.No.23 of 2017. During the pendency of G.W.O.P. for custody of minor children, the revision petitioner filed an application in I.A.No.19 of 2018 for amendment of petition filed in G.W.O.P.No.23 of 2017. By way of amendment, the revision petitioner wanted to project certain facts leading to an additional ground for divorce pointing out conversion of respondent from Hinduism to Christianity. The petitioner has stated few instances which would indicate that the respondent had some interest in Christianity. Though the petition was dismissed on the ground that the petitioner has not stated those particulars in the original petition, it is contended that the amendment is required as the petitioner wants to add something to the original pleading supporting the relief. The allegations now introduced are to the effect that the respondent is a frequent visitor to Church and that she used to take the minor children to Church for facilitating conversion before and after the petition was filed for custody of minor children. Since the petitioner wants to raise some plea regarding the wife's endeavour to convert himself to Christianity,



the same will facilitate the husband to seek custody if he is able to prove the conduct of the respondent showing her interest to convert herself to Christianity along with the children. This Court is unable to sustain the order of the lower Court as the petition for amendment can be permitted even if the petitioner by amendment seeks to introduce some facts which are nothing but addition to the original petition. The revision petitioner can withdraw the petition and present another petition claiming with liberty to file another petition seeking custody of minor children on the basis of the subsequent cause action. In such circumstances, this Court is of the view that the lower Court ought to have allowed the petition for amendment. Accordingly, this Civil Revision Petition in C.R.P. (MD)No.1535 of 2018 is allowed. The order passed by the Family Judge, Triuchirappalli in I.A.No.19 of 2018 is set aside and the petition in I.A.No.19 of 2018 stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

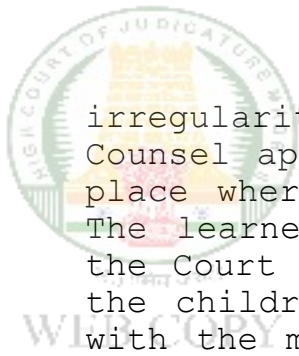
**C.R.P. (MD)No.1536 of 2018**

3.C.R.P.(MD)No.1536 of 2018 is directed against the order dismissing the petition filed by the revision petitioner to receive some documents which are filed under Order VII, Rule 14(3) of C.P.C. In the affidavit filed in support of the petition, the petitioner stated that he would like to mark certain documents which would clearly prove the conduct of the respondent and her inclination to convert into Christianity. The petitioner has given some reference as to the nature of documents and how it is going to help him in establishing his case to support his case in G.W.O.P.No.23 of 2017. The lower Court dismissed the said petition holding that the documents sought to be marked now have not been referred to in the petition. It was further observed by the lower Court that the revision petitioner has not stated about these documents in G.W.O.P.No.23 of 2017 which was filed by the husband for guardianship and custody of the minor children. The additional fact referred to by the learned Judge for dismissing the petition is that this Court has earlier directed the Family Court Judge to dispose of G.W.O.P.No.23 of 2017 within a fixed time. This Court has now disposed of the Civil Revision Petition in C.R.P.(MD)No.1535 of 2018 setting aside the order of the lower Court dismissing the petition filed by the revision petitioner for amendment. The petition in I.A.No.41 of 2018 in G.W.O.P.No.23 of 2017 was filed to receive documents which are relied upon by the revision petitioner for seeking amendment. Since the amendment petition is allowed, this Court is of the view that the petition for reception of documents should be allowed so that the petitioner will have a fair opportunity to establish his case before the lower Court. Hence, C.R.P.(MD)No.1536 of 2018 is allowed. The order passed by the Family Judge, Triuchirappalli in I.A.No.41 of 2018 is set aside and the petition in I.A.No.41 of 2018 stands allowed. No costs.



**C.R.P. (MD) No.1537 of 2018**

4.As pointed out earlier, the petitioner/husband filed G.W.O.P.No.23 of 2017 to have custody of minor sons. During the pendency of G.W.O.P.No.23 of 2017, it is admitted that the respondent also filed G.W.O.P.No.12 of 2017 for guardianship by appointing her as Guardian to her minor children and for custody of minor children with her. During the pendency of both the petitions, the husband filed a petition in I.A.No.351 of 2017 in G.W.O.P.No.23 of 2017 seeking interim custody of the minor children to the petitioner. Having regard to the wish of the children observed by the learned Judge by personal interrogation of minor children, the learned Family Court Judge dismissed the petition filed by the husband. However, visiting right was given to the petitioner to see the minor children between 10.00 a.m. and 12 Noon in the premises of the District Court Legal Services Authority where the Lok Adalat are held periodically. The learned Judge before dismissing the application regarding interim custody has called the minor children and found that the children were not willing to go with the petitioner. It is further stated that one of the children has a remark that his father will threaten them with sickle. The minor children refused to look into the face of the petitioner. Therefore, the Court, after considering the personal views of the minor children, has rightly held that the petitioner is not entitled to interim custody. However, visiting right was given for two hours every month as afore said. Though the learned Counsel appearing for the revision petitioner submitted that the minor children were not on their own while responding to the Judicial Officer during hearing, this Court has no other valid reason to discredit the facts recorded by the lower Court. One of the allegations in this case is that the petitioner is a drunkard though he was employed as a school teacher. The respondent wife is also working as Government teacher in the Government school. Working as a Teacher in Government school does not give them any specific status. However, even by ignoring the allegations which are made against each other, the legal position is that the welfare of the minor children alone is paramount while deciding the issue relating to the guardianship or custody of the minor children. In this case, the father being a natural guardian cannot claim any preference merely because he is the father and natural guardian, as settled by the Hon'ble Supreme Court. The views of the minor children cannot be ignored in a case of this nature when father seeks custody of the minor children even though the minor children are safe in the custody of the respondent wife. Though serious allegations are made against the wife, they will be considered while deciding the main petitions. As it has been repeatedly held that the prime concern of any Court in matter relating to custody is the welfare of the minor children as recorded by the lower Court the custody of the minor children cannot be handed over to petitioner especially when the minors are just 7 and 5 years old. As pointed out earlier, this Court does not see any



irregularity in the order giving visiting right. The learned Counsel appearing for the petitioner is really concerned about the place where the petitioner is expected to see the minor children. The learned Counsel appearing for the petitioner would state that the Court premises may not be conducive for the petitioner to meet the children as the petitioner wants to spend the time personally with the minor children so that he will be able to bring them to normalcy. The petitioner is not right in avoiding the Court premises for any reason. The minor children have expressed their dissatisfaction to go with the father and the estranged father may sometime tend to do something to harm the children. In the stated circumstances, having regard to the facts and peculiar circumstances of this case, this Court finds that the Court premises, as directed by the lower Court, is the best place for the petitioner/husband to visit the children. In case the petitioner finds a better place which will be convenient for both of them, the petitioner can file a petition seeking modification of the order passed by the lower Court regarding the place where the minor should be handed over to the petitioner while exercising his visiting right granted by the Court. As a result, C.R.P.(MD)No.1537 of 2018 is dismissed. No costs.

5.While disposing these Civil Revision Petitions, this Court has observed something on the basis of the findings of Family Court in relation to the interim custody of the minor children. The Family Court hearing the main G.W.O.P.No.23 of 2017 or G.W.O.P.NO.12 of 2017 is directed to dispose of the petition uninfluenced by any of the observation made in these Civil Revision Petitions.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

The Family Court (District Judge),  
Tiruchirappalli.

+3 CC to M/s.J. ANANDHAVALLI, Advocate ( SR-14792,14793,14795,[F]  
dated 24/08/2020 )

**C.R.P. (MD)Nos.1535, 1536 and 1537 of 2018**

**20.08.2020**

VB (15.09.2020) 5P 5C