

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2021

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRP (NPD) Nos.917 and 1057 of 2018

and

CMP.Nos.4961 and 5578 of 2018

and CMP.No.6838 of 2020

CRP (NPD) No.917 of 2018

Dr.N.Kirubakaran

... Petitioner

Vs.

Nandini

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.865 of 2015 in H.M.O.P.No.508 of 2015 on the file of the learned Additional Principal Family Judge, Coimbatore, dated 02.01.2018.

For Petitioner : Ms.Vannila Thambidurai
for Mr.V.Chandra Prabu

For Respondent : Mr.L.Mouli

CRP (NPD) No.1057 of 2018

Nandini

... Petitioner

Vs.

Dr.N.Kirubakaran

... Respondent

Prayer : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and final order dated 02.01.2018 passed by the learned Additional Principal Family Judge, Coimbatore in I.A.No.865 of 2015 in H.M.O.P.No.508 of 2015.

For Petitioner : L.Mouli

For Respondent : Ms.Vannila Thambidurai
for Mr.V.Chandra Prabu.

COMMON ORDER

These Civil Revision Petitions are directed against the fair and decretal order passed in I.A.No.865 of 2015 in H.M.O.P.No.508 of 2015 dated 02.01.2018 on the file of the learned Additional Principal Family Judge, Coimbatore, thereby allowing the interim custody of minor child on every third Saturday from 7 a.m to 7 p.m of the following Sunday of every month.

2. Both the Civil Revision Petitions filed by the petitioner and the respondent challenging the same impugned order of granting interim custody of minor child. In both the Civil Revision Petitions, the petitioner and the respondent are husband and wife, they got married on 04.06.2010 and gave birth to a male child viz., N.K.Jai Pranav on

20.03.2011. Due to misunderstanding between them, they got separated and the wife filed a petition in H.M.O.P.No.508 of 2015 for Judicial Separation. While pending the said petition, the husband filed a petition in I.A.No.865 of 2015, seeking interim custody of the minor child viz., N.K.Jai Pranav. In the meanwhile, the husband also filed a petition for divorce in F.C.O.P.No.126 of 2016 on the file of the Family Court, Salem. Subsequently, it was transferred to file of the Additional Principal Family Court, Coimbatore and re-numbered as H.M.O.P.No.1120 of 2016. In the said petition, the wife filed a petition for interim maintenance in I.A.No.165 of 2017. In pursuance to the divorce petition filed by the husband, the wife had withdrawn the petition for Judicial Separation in H.M.O.P.No.508 of 2015. Even then, the learned Additional Principal Family Judge, Coimbatore passed an order in the petition filed by the husband for interim custody of the minor child. Since the main petition in H.M.O.P.No.508 of 2015 was dismissed as withdrawn, there is no need to pass any order in the Interlocutory Application and it is liable to be closed.

3. That apart, the husband now got married with one Madhuvanthi and gave birth to two children. Therefore, the paramount consideration is

only the welfare of the minor child. When the husband got married with another lady and gave birth to two children, the interim custody of the minor child cannot be granted. Further, now the minor child is aged about 10 years and as such, against his wish, interim custody cannot be given to the husband viz., the father of the minor child.

4. In view of the above discussion, C.R.P.No.1057 of 2018 filed by the wife is allowed and the order passed in I.A.No.865 of 2015 in H.M.O.P.No.508 of 2015 dated 02.01.2018 is hereby set aside and C.R.P.No.917 of 2018 filed by the husband is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

22.06.2021

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Index :Yes/No

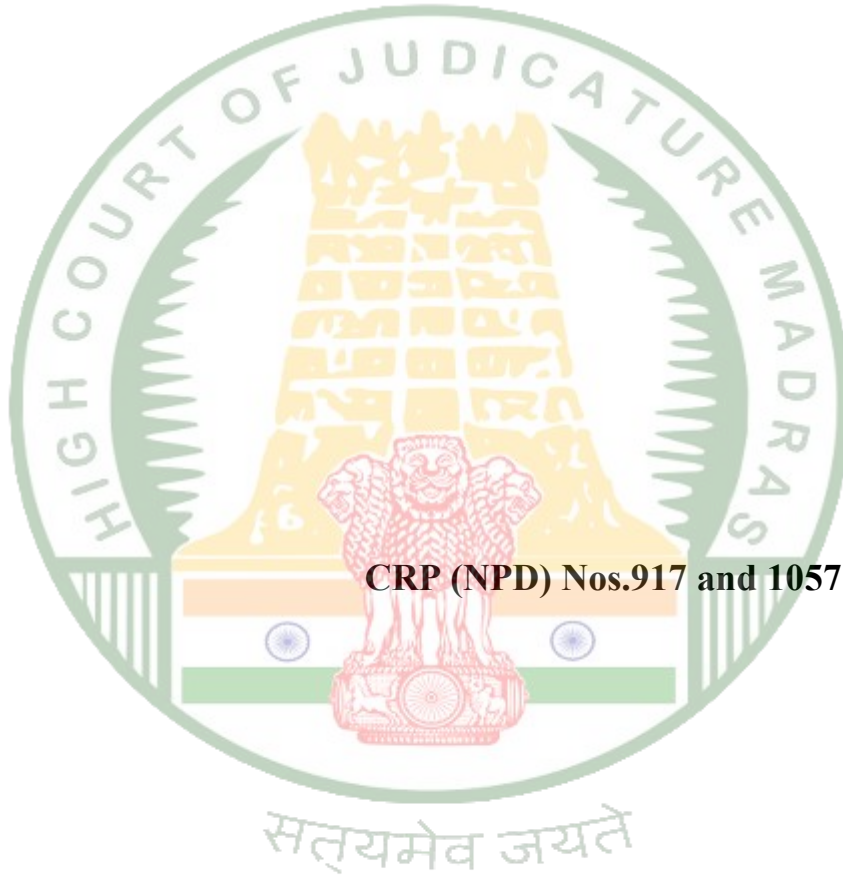
Internet : Yes/No

To

1. The Additional Principal Family Judge, Coimbatore
2. The Section Officer,
V.R. Section, High Court of Madras.

G.K.ILANTHIRAIYAN,J.

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