

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice V.SIVAGNANAM

H.C.P. No.2406 of 2020

V.Mageshwari

.. Petitioner

Vs.

1.The Sub Inspector of Police,
Reddiyarpalayam Police Station,
Puducherry.

2.Dhanya

3.N.Hari

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus directing the first respondent to produce the petitioner's grandson minor Darsh Chiranjeevi, S/o.Ezhilvendan, aged 10 years and petitioner's granddaughter minor Tharunika, D/o.Ezhilvendan, aged 5 years before this Court from the custody of the second respondent and third respondent herein and hand over to the petitioner herein.

For Petitioner : Mr.B.Shruthan

For Respondents: Mr.Bharatha Chakravarthy,
Public Prosecutor (Puducherry)
for R1
Mr.S.Shankar for R2 and R3

ORDER

[Order of the Court was made by V.SIVAGNANAM, J.]

This habeas corpus petition has been filed seeking to direct the first respondent to produce the petitioner's grandson minor Darsh Chiranjeevi, S/o.Ezhilvendan, aged 10 years and petitioner's granddaughter minor Tharunika, D/o.Ezhilvendan, aged 5 years before this Court from the custody of the second respondent and third respondent herein and hand over to the petitioner herein.

2. It is the case of the petitioner that her grandson Darsh Chiranjeevi, aged about 10 years and granddaughter Tharunika, aged about 5 years, were forcibly taken away by Dhanya, daughter-in-law of the petitioner, second respondent herein on 09.11.2020 and hence, the petitioner has filed this habeas corpus petition for custody of her grandchildren.

3. Today, V.Mageshwari, petitioner, Dhanya (Mobile No.96003 51063), second respondent, residing at Kunnarath House, Karuvachery, Payyanur is present before this Court along with two minor children Darsh Chiranjeevi, aged about 10 years and Tharunika, aged about 5 years.

4. On perusal of the records, it is seen that Ezhilvendan, son of the petitioner has filed G.O.P.No.7 of 2020 before the Family Court, Puducherry, seeking guardianship of his two children Darsh Chiranjeevi and Tharunika and the same is pending. He has also filed M.O.P.No.115 of 2020 before the Family Court, Puducherry, for divorce. Further, Dhanya, second respondent herein has filed M.C.No.57 of 2020 under Section 125 Cr.P.C. before the Family Court, Kannur, Kerala, for maintenance and she has also filed C.M.P.Nos.1308 & 1309 of 2020 before the Judicial First Class Magistrate Court, Payyannur, Kerala, for custody of her two children Darsh Chiranjeevi and Tharunika.

5. Since the petitions filed by Dhanya and Ezhilvendan for guardianship of their children are pending on the file of the Courts below concerned, they shall work out their remedy with regard to the guardianship in the manner known to law.

6. However, when this Court enquired the children viz., Darsh Chiranjeevi and Tharunika, they clearly stated that they would like to live with their mother Dhanya, second respondent. Under such circumstances, a writ of habeas corpus cannot be issued as the custody of the children with the mother cannot be per se said to be illegal.

7. The learned counsel for the petitioner submitted that the petitioner may be permitted to visit her grandchildren and pleaded this Court to grant visitation rights.

8. In view of the above discussion, this Court issues the following directions:

- i. The petitioner shall have visitation rights to visit her grandchildren viz., Darsh Chiranjeevi and Tharunika, in the above address of Dhanya, second respondent, in the weekends after prior intimation;

ii.However, the petitioner shall not take away the children from the custody of Dhanya, second respondent;
iii.This arrangement is purely temporary until further orders are passed by the Family Court, Puducherry, in G.O.P.No.7 of 2020; and

iv.In this order, we have mentioned the cases filed by the parties against each other, so that, the parties can enter appearance in those cases before the respective Courts and contest the same without waiting for summons therefrom.

With the above directions, this habeas corpus petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nsd
To

- 1.The Family Judge,
Puducherry.
(G.O.P.No.7 of 2020 and M.O.P.No.115 of 2020)
 - 2.The Family Judge,
Kannur, Kerala.
(M.C.No.57 of 2020)
 - 3.The Judicial First Class Magistrate,
Payyannur, Kerala.
(C.M.P.Nos.1308 & 1309 of 2020)
 - 4.The Sub Inspector of Police,
Reddiyarpalayam Police Station,
Puducherry.
 - 5.The Public Prosecutor,
Puducherry.
- +1 CC to Mr.B.Shruthan, Advocate sr 10536.

H.C.P. No.2406 of 2020

MGR (CO)
SP (16/03/2021)