



O.S.A.Nos.112 & 113 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY  
and  
The Hon'ble Mr. Justice D.BHARATHA CHAKRAVARTHY

O.S.A.Nos. 112 and 113 of 2022  
C.M.P.Nos. 7668, 7661, 7639, 7635 & 7642 of 2022

K.Sridevi Maragatham

.. Appellant  
in both appeals

VS

N.Sundar

.. Respondent  
in both appeals

Appeals filed under Order XXXVI Rule 9 of O.S.Rules read with  
Clause 15 of Letters Patent against the judgment and decree dated  
10.03.2022 passed in A.Nos. 42 & 43 of 2022 in O.A.No.1188 of 2017  
in O.P.No.964 of 2017.

For Appellant : Ms.P.R.Umamaheswari

For Respondent : Mr.S.Sriram  
for Mr.K.Govi Ganesan



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**COMMON JUDGMENT**  
(Delivered by PARESH UPADHYAY.,J)

1. Challenge in these appeals is made to the common order dated 10.03.2022 recorded on A.Nos. 42 and 43 of 2022 in O.A.No. 1188 of 2017 in O.P.No.964 of 2017. These appeals are by the mother. The matter pertains to the custody of the minor child (son), who is with the mother.

2. Heard Ms.P.R.Umamaheswari, learned advocate for the appellant / mother and Mr.S.Sriram, learned advocate for the respondent / father.

3. Relevant facts leading to filing of these appeals are as under:-

3.1 The appellant / wife – mother and the respondent / husband - father got married in the year 2013.

3.2 Male child was born on 20.12.2015.



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3.3 The husband and wife are not staying together since 21.12.2016 and the son, who at the relevant time was about one year of age has been with the mother all throughout.

3.4 The mother has been staying with her parents.

3.5 In these intervening years, the father instituted proceedings for restitution of conjugal rights and the mother filed divorce proceedings on the ground of cruelty. It is informed to the Court that on 29.10.2022, the application filed by the husband for restitution of conjugal rights is dismissed and the divorce asked for by the mother on the ground of cruelty has been granted.

3.6 The divorce proceedings is not the subject matter of these appeals. The subject matter is the order referred above, by which modification was asked for by the mother in the order dated 23.04.2018 which regulated the visitation by the father of the child. The said applications are dismissed by learned Single Judge which is challenged in these appeals.



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3.7 As noted above, the circumstances prevailing on 23.04.2018 and even on 10.03.2022 (the date of order under challenge) have undergone substantial change thereafter, on the face of the order dated 29.10.2022. Though the merits of the order dated 29.10.2022 can not be the subject matter of these appeals, the inter-se relationship of husband, wife and the child can not be examined separately and therefore that fact is also kept in view.

4. Learned advocate for the appellant / mother has submitted that, the mother has got employment at Australia, which is initially for a period of two years, out of which six months have passed by this time and she needs to go there. It is further submitted that, since the minor son needs to be with the appellant / mother, it is necessary to take the child to Australia along with her. It is submitted that, with a view to see that no conflict is complained vis-a-vis the order of this Court dated 23.04.2018, the applications were moved being A.Nos. 42 and 43 of 2022 praying for appropriate reliefs which are dismissed by learned Single Judge by the order under challenge and therefore the same be interfered with. It is submitted that, the appellant / mother be permitted to take the child with her to Australia for the reasons recorded above. It is submitted



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that, the order dated 10.03.2022 recorded on A.Nos. 42 and 43 of 2022 be set aside and these appeals be allowed.

5. On the other hand, learned advocate for the respondent / father has vehemently opposed these appeals. It is submitted that, once the child goes out of the territorial jurisdiction of this Court, it would be very difficult for the father to meet the child as ordered by this Court earlier and therefore the applications are rightly dismissed by learned Single Judge and no interference be made by this Court. It is submitted that, these appeals be dismissed.

6. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

6.1 The appellant / mother and the respondent / father got married in the year 2013. Male child was born on 20.12.2015. The husband and wife are not staying together since 21.12.2016 and the son, who at the relevant time was about one year of age has been with the mother all throughout. The mother has been staying with her parents.



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6.2 We find that, not allowing the mother to take child with her would not only be prejudicial to the mother, would be against the interest and childhood of the son as well. We find that, keeping the child with any other person, only for the sake of visitation right of the father can not be considered to be sufficient ground, while deciding the applications filed by the mother, on which the impugned order is passed. We do not find any satisfactory reason recorded by learned Single Judge in the order under challenge. Keeping in view the career of the mother, more particularly on the face of the divorce decree dated 29.10.2022 and the tender age of the child, we deem it appropriate to allow the applications by setting aside the impugned order dated 10.03.2022.

7. In view of the above, the following order is passed:-

7.1 These appeals are allowed.

7.2 The order dated 10.03.2022 is quashed and set aside.



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7.3 A.Nos.42 and 43 of 2022 are allowed. It is held that, it would be open to the appellant / mother to take the child with her, to the place where she intends to settle, including any foreign country, as and when necessity arises.

7.4 It is open to the respondent / father and appellant / mother to work out the visitation of the child inter-se, by any permissible mode, including electronic mode.

7.5. No costs. C.M.Ps would not survive.

(P.U., J) (D.B.C., J)  
17.11.2022

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To  
The Sub-Assistant Registrar,  
Original Side, High Court, Madras.



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PARESH UPADHYAY, J.  
and  
D.BHARATHA CHAKRAVARTHY, J.

ssm

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