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A.No.2653 of 2022

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in
O.P.No.322 of 2022

C.V.KARTHIKEYAN,J.,

The Original Petition has been filed seeking permanent custody and guardianship of the minor child Amudhan @ Amudhanilavan who was born on 30.12.2015.

2. The application has been filed by the father. The respondent is the maternal grandmother.

3. The present application has been filed seeking interim directions to visit and interact with the child.

4. My learned predecessor on 25.07.2022 had, after noting the presence of the respondent, and that she has no objection if the petitioner/father visits the minor child during holidays and weekends had granted permission to the petitioner to visit the minor child at the place of the respondent, during weekends and on holidays between 4.00 p.m., and 6.00 p.m.

5. It is also stated that information in advance may be given about his visitation during holidays, Saturdays and Sundays.



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6. Thereafter, the application had come up before me on two occasions and on hearing the learned counsels, there was a slight modification made taking into consideration, that the petitioner was in Ennore and the respondent was in Mylapore and the distance being 15 kms, the visitation timing was modified from 10.00 a.m., to 5.00 p.m., on every Sunday.

7. The visitation rights during Saturdays was retained namely, between 4.00 p.m., and 6.00 p.m.

8. The order was reiterated by a further order on 12.10.2022.

9. A counter has now been filed in the application by the respondent.

10. The family life appears to be a little complicated. The petitioner had married earlier and had two children. The daughter of the respondent was his 2nd wife and incidentally she had also been married earlier and had a son who is now about 15 years old through the first marriage. The said lady has unfortunately died leaving behind her minor son whose custody is the issue before this Court.



11. It is the contention of the learned counsel for the respondent that the petitioner had married twice and the daughter of the respondent had also married twice and that both have children through the 1st marriage.

12. It is specifically stated by the learned counsel for the respondent that the daughter of the respondent was given in marriage to the petitioner in the solemn trust and that the boy born through the 1st marriage would also be taken care by the petitioner herein.

13. It is stated that trust in that regard had not been kept up and it is stated that the petition has been filed seeking custody and guardianship with an oblique motive to gain some privilege since the daughter of the respondent had, according to the petitioner, died of covid but according to the respondent died of respiratory complications.

14. In view of the rival contentions made and particularly, there being allegations of suppression of material facts, it would only be appropriate that the parties are relegated to the trial process and tender evidence in entirety to their satisfaction regarding not only the marriage, regarding the earlier marriage, regarding the birth of the children through the earlier marriage and regarding the birth of the children through the marriage between the petitioner and the daughter of the respondent.



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15. The respective capabilities of the petitioner and the respondent to maintain the children would also have to be tendered in evidence. There vision for the welfare of the children would also have to be tendered in evidence.

16. These are aspects which can be examined only after opportunity is granted to both of them.

17. Since my learned predecessor had recorded the presence of the respondent who had stated that she had no objection to the petitioner visiting the residence of the respondent to interact with the child and the timings alone had been modified in the subsequent order, let me not enter into a detailed discussion but, maintain the visitation rights on Saturdays between 4.00 p.m., and 6.00 p.m., and on Sundays between 10.00 a.m., and 2.00 p.m., and on public holidays between 4.00 p.m., and 6.00 p.m.

18. The petitioner is actually going over the residence of the respondent.

19. He may inform the respondent in advance. If for some reason, is not able to go on a particular weekend or on a particular public holiday, he may again inform the respondent but on a broad basis let visitation continue till the conclusion of the trial.



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20. It is made clear that the children should not be examined as witnesses during the course of trial and oath cannot be given to them to speak up either against their mother or against their father. If any such requirement to examine the children is considered necessary, then an application has to be filed before this Court.

21. Post the matter before the learned Master for recording of evidence. The petitioner to appear before the learned Master on 05.12.2022.

22. Let recording of evidence continue and after evidence is recorded the matter may be listed back before this Court.

23. With the above observation, the application stands closed.

15.11.2022

ssi

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