



O.P.No.610 of 2020 and
A.No.3180 of 2020

P.VELMURUGAN.,J

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This Original Petition has been filed by the petitioner to grant permanent custody of his minor child namely Anirudh Shankar, who born on 08.08.2011.

2. Petitioner and respondent are the father and mother of the minor child Anirudh Shankar respectively.

3. Learned counsel for the petitioner/father submitted that his marriage with the respondent was solemnized on 10.05.2010. Due to dispute and misunderstanding, the respondent/wife left the matrimonial home and residing in her parent's home. Allegation made by the petitioner against the respondent is that the respondent is an employee and so the child is with her mother at the day time and she could not concentrate on the child during week days. The respondent and her family members have blocked every access of the petitioner to his son. The respondent is preventing the child from seeing the petitioner. During week days, the child was left alone with respondent's mother, who is a TB patient. The respondent hardly spent only two hours time with the child during night time, after returning from work. The petitioner was not permitted to see the child even in the school, as per the instructions of the respondent.



4. The respondent/mother has filed the counter affidavit and denied all the allegations made by the petitioner/father. The respondent/wife was forced to leave the matrimonial home due to threatening behavior of the petitioner/husband. She is the one who has taken care of her child. With great difficulty, she obtained admission in a reputed school for her child. The petitioner has not contributed any money towards the education of the child. The petitioner did not spend adequate time with the child. She never prevented the petitioner from meeting the minor son.

5. Admittedly, the respondent/mother had admitted her son in Padma Seshadri Bala Bhavan School, T.Nagar. Now, the age of the minor son is 10 years. Petitioner's father and mother are aged persons and even the petitioner himself stated in the Original Petition is that his parents are aged. The petitioner alone has to take care of his parents. The respondent/wife insisted the petitioner to have separate house and accommodation. Since he wanted to look after his parents, he refused to do the same. Hence the respondent/mother left the matrimonial home with the minor child.



6. The main allegation of the petitioner/father is that the respondent/mother is not taking care of the child and she is a working woman and she is going to work even before the minor son wakes up from bed. She would hardly spend only two hours per day with the child and no parental care has been taken by the respondent/mother. She did not properly feed the child. Except the petitioner/father, no other witnesses were examined. The respondent/wife totally denied the averments made in the petition. The fact remains that now the child is with respondent/mother. Admittedly, the child is residing in K.K.Nagar along with his mother. The minor child is also studying in one of the reputed schools in the said locality and with great difficult, admission was obtained in the said school.

7. Further, even as per law, the Hindu Minority and Guardians Act and Guardians and Wards Act, both the mother and father are the natural guardians to the child. The respondent/mother has clearly stated that she is a working woman, she is taking care of her child and she is giving all care to her child. She used to go to office only at 9 ' o clock in the morning after sending the child to the school and comes back at 5.30 pm. The petitioner/father has alleged that the respondent left the matrimonial home and she is not taking care of her mother and her child also and not even allowing the father to visit the child.



Earlier order passed by this Court on 18.08.2021 has also not been properly followed by the respondent/wife. The petitioner has not proved that the respondent was acting against the interest of the child or against the welfare of the child. The respondent/mother has clearly stated in her counter affidavit that she admitted his son in Padma Seshadri Bala Bhavan School, T.Nagar and she is taking care of her child.

8. To decide the petition, the Court has to see only the interest and welfare of the minor child which is paramount consideration. Now, the child is residing with one of the natural guardians ie., with mother. She also admitted her child in one of the reputed schools at Chennai and also she is taking care of her child. Further the respondent/mother is residing in the concerned area, whereas, the petitioner/father is residing far away from that place. Further, he admitted that he is doing construction work and he has taken the business of his father. He used to do construction work in Chennai and Bangalore. His parents are also aged persons. Therefore, it is very difficult to manage the minor child. Therefore, the petitioner/father has not established that the respondent/mother was acting against the interest and welfare of the child. Mother is also one of the natural guardians. The petitioner has not established that the respondent/mother is not a fit person to have the custody of the child and she is acting against the welfare and interest of the minor child.



9. Under the above circumstances, this petition is dismissed. Since the petitioner is the father of the child, the respondent/mother is directed to hand over the child during weekends ie., on all Sundays except the Sundays of any important events like school function, examination, when the child is not feeling well, not in a position to move from the house and the petitioner/father has got visitation rights during the week ends and he can have the custody of the child on those Sundays.

10. With the above directions, the Original Petition is dismissed. Consequently, connected application is also closed.

24.03.2022

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