



C.M.A.No.2112 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**  
and  
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

**C.M.A.No.2112 of 2022**  
**and C.M.P.No.16383 of 2022**

S.Naachammai

... Appellant

Vs.

K.Balaji

... Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984, read with Section 28 of the Hindu Marriage Act, 1955, against the order dated 15.07.2022 made in I.A.No.1 of 2021 in H.M.O.P.No.2588 of 2021 on the file of the III Additional Principal Family Court, Chennai.

For Appellant : Mrs.Thenmozhi  
for Mr.S.Jayaraj

For Respondent : Mr.S.Francis Ashok

**J U D G M E N T**



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(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/wife against the order dated 15.07.2022 made in I.A.No.1 of 2021 in H.M.O.P.No.2588 of 2021 on the file of the III Additional Principal Family Court, Chennai.

2.The appellant is the petitioner in H.M.O.P.No.2588 of 2021 filed against the respondent for dissolution of marriage conducted between the appellant and respondent on 09.12.2010. In the said O.P., the respondent/husband filed I.A.No.1 of 2021 under Section 26 of Hindu Marriage Act, for a direction to the appellant to give the custody of minor child viz., Selvi. Shanmuga Priya, to the respondent every Sunday between 10.00 a.m. and 12.00 noon at Old No.143, New No.14, 5<sup>th</sup> street, AVM Colony, Virugambakkam, Chennai-92, where the appellant resides with her minor child. The appellant resisted the said I.A. alleging that the respondent is a gold smuggler, money launderer, Hawala agent and illegal cab driver. Before the III Additional Principal Family Court, Chennai, both the appellant and respondent did not let in any oral and documentary evidence. The learned



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Judge considering the materials on record placed before her, granted only visitation right to the respondent to see the minor child Selvi. Shanmuga Priya, twice in a month on the first and third Saturday of every month from 10.00 a.m. to 12.00 p.m. at Child Care Centre, attached to Family Court, Chennai, till the disposal of the main O.P. Challenging the said order, the appellant has come out with the present appeal.

3.The learned counsel appearing for the appellant made submissions that minor child is only three years old suffering from speech impairment and cannot talk fluently. In view of bad character of respondent, it is not advisable to give custody of the minor child to the respondent. Even the respondent is not entitled to visitation right. The learned Judge failed to consider the paramount interest and welfare of the minor child, who is only three years old and prayed for setting aside the order of the Tribunal and allowing the appeal.

4.The respondent filed counter affidavit denied all the allegations made by the appellant and submitted that the respondent is father of minor child and he is entitled to custody of the minor child. But the learned Judge granted



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only visitation right that too only twice in a month. The learned Judge has given reason for granting visitation right, there is no reason to interfere with the said order and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the entire materials on record.

6.From the materials on record, it is seen that the appellant has filed O.P. for dissolution of marriage, which is pending for disposal. It is not in dispute that the respondent is father of minor child. Various allegations made by the appellant against the respondent and denial of the respondent are to be proved only at the time of final hearing of the O.P. As rightly pointed out by the learned Judge that minor child require love of father also. At the same time, considering the submissions of learned counsel appearing for the appellant that age of the minor child is three years and having some speech impairment, it is very difficult to retain three years old child in one place for two hours and therefore, it will be in the interest of justice, order of the



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learned Judge is modified granting visitation right to the respondent to see the child only for half an hour on first and third Saturday of every month from 11.30 a.m. to 12 noon at Child Care Centre, attached to Family Court, Chennai, till the disposal of the main O.P.

7. With the above directions, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (S.M., J)  
28.10.2022

Index : Yes / No  
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To

1. III Additional Principal Judge  
Family Court, Chennai.

2. The Section Officer  
VR Section  
High Court  
Madras.

**V.M.VELUMANI,J.**  
**and**  
**SUNDER MOHAN,J.**



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