



WEB COPY



HCP.No.2165 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

HCP.No.2165 of 2024

R. Durgalakshmi

...

Petitioner

Vs

1 The Superintendent of Police,
Salem,
Salem District- 636 010.

2. The Inspector of Police,
All Women's Police Station,
Salem City,
Salem District – 636 010.

3. Sugumaran

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Habeas Corpus directing the respondents 1 and 3 to produce the petitioner's minor children, 3 years old Sai Mishitha and 7 month's old Dhiranya before this Court and hand over those children to the petitioner, who is also the legal custodian.

For Petitioner

: Mrs. W.R.Subhashini



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For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor,
for R1 & R2

: Mr. S.P.Yuaraj,
for R3

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Habeas Corpus Petition has been instituted to direct the respondents 1 and 3 to produce the petitioner's minor children, viz., Sai Mishitha, 3 years old and Dhiranya, 7 months old, before this Court and hand over those children to the petitioner/mother.

2. The marriage between the petitioner and the 3rd respondent was solemnized on 21.08.2020 as per Hindu Rights and Customs. On account of misunderstanding, the petitioner and the 3rd respondent are living separately. The petition filed for dissolution of marriage was rejected and the matrimonial relationship continued between the petitioner and the 3rd respondent. From and out of the wedlock, two female children born, presently aged about 3 years and 7 months.



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4. The learned counsel for the 3rd respondent would submit that the petitioner voluntarily handed over the children to the 3rd respondent and therefore, the allegation is false.

5. However, this Court cannot entertain the disputed issues relating to matrimony. Question arises whether custody of the female children, who are aged about 3 years and 7 months respectively to the 3rd respondent/father and the petitioner/mother. Section 6 of the Hindu Minority and Guardianship Act 1956 provides answer as under :-

“ 6(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; ”



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6. As per Sub-clause (a) to Section 6, the custody of minor, who has not completed the age of 5 years, shall originally be with the mother. The mother also employed in I.T sector and she is capable of taking care of the children. This being the factum, the children are to be handed over to the petitioner/mother and the 3rd respondent is not entitled to take away the children.

7. Accordingly, we direct the 3rd respondent to hand over the minor children, namely, Sai Mishitha, aged about 3 years and Dhiranya, 7 months old, to the petitioner forthwith. The children are handed over before this Court itself. The parties are at liberty to resolve the issues before the Competent Court and the 3rd respondent is at liberty to file an appropriate application seeking visitation right or otherwise in the manner known to law.

8. With the above directions, this Habeas Corpus Petition is disposed of.

[S.M.S., J.]

[V.S.G., J.]

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Index: Yes/No

Speaking/Non-speaking order

mrp



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To

1. The Superintendent of Police,
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Salem District- 636 010.

2. The Inspector of Police,
All Women's Police Station,
Salem City,
Salem District – 636 010.

3. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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AND
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