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A No. 2140 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-04-2025

CORAM

THE HONOURABLE MR JUSTICE K.KUMARESH BABU

A No. 2140 of 2025

1. Mr.Sadhasivam and Another
S/o.M.Ezhumalai, and another

2. Radha
W/o.E.Sadhasivam, Both are residing at
No.60, Gangaianman Koil Street,
Thalakanikuppam, Vanur Taluk,
Villupuram District, Karattai Post,
Tamil Nadu - 604 154.

Applicant(s)

Vs

1. Kumar and 2 Others
S/o.M.Ezhumalai,

2.Bhuvaneswari
W/o.Kumar, Both are residing at Villa
No.54, Street No.51A, Rashidiya,
Dubai, UAE.

3.Rani
W/o.Late Velayutham, No.23/8, Telugu Respondent(s)
Chetty Street, Old Washermanpet,
Chennai - 21.



PRAYER

To grant interim custody of the child Roshini to the Applicant herein during the summer vacation from 01/05/2025 to 01/06/2025.

For Applicants: Mr.M.B.Dominique

For Respondents: Mr.N Nagu shah

ORDER

This application has been filed to grant interim custody of the child to the applicants herein during the summer vacation from 01.05.2025 to 01.06.2025.

2. The applicants herein are the biological parents of the minor child.

The learned counsel for the applicants would refer to the order passed by this Court in A.No.1922 of 2024 and contended that the respondents have no manner of right to retain the custody of the child who is not born to them and directed the respondents to hand over the custody of the minor child to the applicants herein.

3. The applicants were also permitted to retain the custody of the minor child till 05.06.2024. The said order was challenged by the first and second respondents and the Hon'ble Division Bench of this Court, while



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admitting an intra Court appeal had granted interim stay and had dismissed the intra Court appeal by holding that the respondents herein have filed the appeal without any cause or reason, just with an intent to put on hold the direction issued by the learned Single Judge on merits and further imposed a cost of Rs.25,000/- on the respondents herein as they have deprived the natural parents of their right for no reason and further the Hon'ble Division Bench of this Court had granted liberty to the applicants herein to file a fresh application seeking custody of the minor child.

4. Since the order has been violated, a contempt petition in Cont P No.1673 of 2024 has been moved by the applicants herein and the same is pending for consideration. The applicants are the biological parents of the minor child and they should be granted interim custody during the summer vacation.

5. The learned counsel for the respondents would contend that the first and the second respondents are living in Dubai and hence counter affidavit has been filed on behalf of them by the third respondent herein. He would



submit that the first respondent is the elder brother of the first petitioner and the second respondent is the wife of the first respondent.

6. He would further submit that the applicants have three daughters and one Son. The applicants have offered one of their minor Daughter, viz., Roshini involved in this case, in adoption to the first and the second respondents. The first respondent also, considering the relationship had considered to take the minor child in adoption subject to the condition that they could not take the minor child to Dubai and the child would be taken care by his younger brother and his wife as there is no conducive atmosphere at Dubai. He also submitted that as early as 2015, the said adoption was carried out and adoption ceremony took place at Mayilam Murugan Temple in the presence of friends and relatives.

7. The learned counsel for the respondents submitted that the applicants were given visitation rights to see the child once in a week at Chennai. While so, the applicants had filed A.No.1922 of 2022 seeking for



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interim custody of the minor child from 01.05.2024 to 01.06.2024 and the same was allowed *vide* order dated 22.04.2024. As against the said order, the first and the second respondent had filed OSA No.95 of 2024 and the said OSA has become infructuous as the custody sought for the month has expired. Further, the applicants have not cared to see the minor child from February 2024 till this date for the past 14 months, which clearly exposes that the petitioners have no love and affection towards the minor child but their intention was only to harass the first and the second respondents and to give up their rights in the family properties in their favour and hence, prayed for dismissal of this present petition.

8. Considered the claims putforth by both the parities.

9. This Court, *vide* order dated 03.01.2024, in an application No.5903 of 2023, taking the adaptive situation of the minor child had directed visitation rights for their biological parents once in a week. This Court had also granted interim custody of the minor child to the applicants on 14.01.2024 and



15.01.2024, so that the minor child can feel the company of her own brother and sister who are residing with her biological parents. Further, A.No.1922 of 2024 was moved by the applicants seeking interim custody of the minor child during the summer vacation from 01.05.2024 to 31.05.2024.

10. This Court, holding that the first and the second respondents have no legal rights to retain the custody of the minor child, directed interim custody of the child from 01.05.2024 till 05.06.2024 to the applicants *vide* order dated 22.04.2024. Aggrieved by the same, the respondents have filed intra Court appeal in O.S.A.No.95 of 2024, wherein the first and the second respondents claim to be the adoptive parents of the minor child. The Hon'ble Division Bench of this Court, had clearly held that the appeal has been filed without any cause or reason and is just with an intent to put on hold the direction issued by the learned Single Judge on merits. Further, the Hon'ble Bench has also held that the order passed by the learned Single Judge has been sabotaged by the respondents with ulterior motive and the said appeal was dismissed by imposing a cost to a sum of Rs.25,000/-. The similar prayer for having the interim



custody of the minor child during the ensuing summer vacation had now been made by the applicants who are the biological parents of the minor child.

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11. Even if the first and the second respondents are able to substantiate that they are the adoptive parents of the minor child, the biological parents of the minor child cannot be deprived of their love and affection towards their minor child born to them. The conduct of the respondents as recorded by the Hon'ble Division Bench of this Court speaks for itself.

12. In fine, A.No.2140 of 2025 is ordered as prayed for. The third respondent, who is the present with the minor child is directed to hand over the custody of the minor child to the biological parents, the applicants herein forthwith. This direction is issued by this Court, even though the prayer sought for by the applicants are only to grant interim custody of the minor child to the applicants herein during the summer vacation from 01/05/2025 to 01/06/2025, by taking into consideration that a similar order passed by this Court was violated by the respondents herein. The applicants shall take custody of the



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child from the third respondent and shall hand over the child back to the third respondent on 01.06.2025.

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13. With the above directions, is ordered.

28-04-2025

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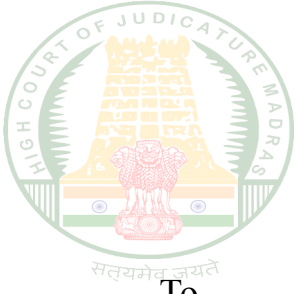
Note: Issue order copy today at 5:00p.m.

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Neutral Citation: Yes/No



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To
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