



C.R.P.(MD).No.2217 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.2217 of 2022
and CMP(MD).No.10198 of 2022

Anton Victoriya

... Petitioner

-VS-

Ganeswari @ Blessy

...Respondent

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 25.10.2019 passed in I.A.No.163 of 2019 in G.W.O.P.No.172 of 2019 on the file of the Principal District Judge, Thoothukudi.

For Petitioner : Mr.M.P.Senthil

For Respondent : No appearance

ORDER

The petitioner in GWOP.No.172 of 2019 on the file of the Principal District Court, Thoothukudi is the revision petitioner.



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2.The petitioner herein got married to the respondent on 08.05.2008. Due to matrimonial dispute, the petitioner herein had filed S.M.O.P.No.199 of 2016 before the District Court, Thoothukudi and an exparte divorce was granted in favour of the revision petitioner on 07.10.2016. The wife has not filed any application to set aside the exparte divorce decree.

3.The couple were blessed with two sons and custody of the sons were retained by the respondent/mother. The revision petitioner herein had filed GWOP.No.172 of 2019. The said GWOP was transferred to the Family Court, Thoothukudi and it was renumbered as GWOP.No.323 of 2023. Pending GWOP, the petitioner had filed I.A.No.163 of 2019 seeking interim custody of his two minor sons for three days in a week. This application was dismissed by the Principal District Judge, Thoothukudi on the ground that the children are very much attached to the mother. The trial Court had further found that the petitioner is living with another woman and therefore, it may not be safe to give interim custody to the petitioner. In the same order, the petitioner was directed to pay a sum of Rs.25,000/- each to both children towards cost within a period of 10 days. This cost was deposited by the revision petitioner.



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4.The learned Principal District Judge has dismissed the Guardian O.P. on 21.11.2019. Challenging the same, the petitioner had filed CMA(MD).No.1191 of 2022. This Court after hearing both the parties, had allowed the appeal on 12.01.2023 and directed the Principal District Judge, Thoothukudi to hear the petition afresh.

5.According to the learned counsel for the revision petitioner, after divorce, the petitioner has married another woman and therefore, the same cannot be a legal impediment for the father to have interim custody of the children for three days in a week. He had further contended that the petitioner has also complied with the order of cost imposed by the Court on 25.10.2019.

6.Even though the respondent was served on 22.11.2022 and her name is printed in the cause list, she has not chosen to appear either in person or through counsel.

7.The sons of the petitioner are aged about 10 and 12 years. They are in the custody of the respondent/mother who is a teacher. The sons are attending the School regularly. In such circumstances, if the interim custody is granted to the petitioner for three days in a week it is likely to affect the education of both children. However, as a father, the



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petitioner would be entitled to have visitation rights over his children.

Remarriage of the petitioner after divorce cannot be a legal impediment for having visitation rights.

8.In view of the above said deliberations, this Court passes the following orders.

a)The order in I.A.No.163 of 2019 in GWOP.No.172 of 2019 dated 25.10.2019 is hereby set aside.

b)The petitioner shall have visitation rights to meet his sons between 5.00 p.m to 8.00 p.m on every Sunday at Jesus With Us Fellowship, 4D/3, Karunanidhi Nagar, Tiruchendur Road, Near Annammal College, Opposite Post Office Passport Seva Centre, Thoothukudi 628 003 till the disposal of GWOP.No.323 of 2024 on the file of the Family Court, Thoothukudi.

9.With the above said observations, this civil revision petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

05.02.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

- 1.The Principal District Judge, Thoothukudi.
- 2.The Judge, Family Court, Thoothukudi
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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