



O.S.A.No.43 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10 / 03 / 2026

PRONOUNCED ON : 13 / 03 / 2026

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE K.GOVINDARAJAN
THILAKAVADI

O.S.A.No.43 of 2026

K.Priyanka

... Appellant

Vs.

S.Kamesh

... Respondent

Prayer: This Original Side Appeal is filed under Order 36 Rule 11 of O.S.Rules r/w Clause 15 of Letters Patent, to set aside the order and decree dated 10.12.2025 made in Application No.4808 of 2025 in O.P.No.498 of 2025.

For Appellant : Mr.P.Rajkumar

For Respondent : Mr.P.Raja



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JUDGMENT

P.VELMURUGAN, J.

This Original Side Appeal has been filed by the appellant/wife, K.Priyanka, challenging the order dated 10.12.2025 passed in Application No.4808 of 2025 in O.P.No.498 of 2025, whereby the learned Single Judge restricted her visitation with the minor child to three hours every Saturday at Vadivudaiamman Temple, Tiruvottiyur, instead of granting interim custody from Friday 5.00 p.m. to Sunday 5.00 p.m., as sought for by her.

2. The marriage between the appellant/wife and the respondent/husband was solemnized on 23.08.2018. A male child, Karvik Krishna, was born on 14.08.2020. The child has been diagnosed with Autism Spectrum Disorder and requires continuous therapies and structured care. Disputes subsequently arose between the parties and they have been separated, leading to multiple legal proceedings. The respondent/husband filed HMOP No.2558 of 2024 before the II Additional Family Court, Chennai, seeking divorce under Section 13(1)(i-a) and (iii) of the Hindu Marriage Act. The appellant/wife, in turn, filed HMOP No.2600 of 2025



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before the III Additional Family Court, Chennai, seeking restitution of conjugal rights. Pending those proceedings, the appellant filed O.P.No.498 of 2025 before this Court under the Guardians and Wards Act, seeking permanent custody and guardianship of the minor child. In the course of that petition, she filed Application No.4808 of 2025 for interim custody. By order dated 10.12.2025, the learned Single Judge recorded that the appellant had sought interim custody of her minor son from Friday 5.00 PM to Sunday 5.00 PM every week. However, as against the prayer so made, the learned Judge restricted the appellant's visitation rights to three hours every Saturday at Vadivudaiamman Temple, Tiruvottiyur. Similarly, in the original petition, the respondent/husband had filed Application No.5230 of 2025 seeking issuance of summons to the Superintendent/Medical Record Officer, Rajiv Gandhi Government General Hospital, Chennai, to produce the complete and original medical records bearing Outpatient Sheet O.P.No.530/02/2024, including the psychometric notes and consultation reports pertaining to Mrs.K.Priyanka, before the learned Single Judge on a date fixed by the Court. The learned Judge dismissed the said application.



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3. Aggrieved by the restriction imposed on her access to the child, the present appeal has been preferred by the wife/appellant. The respondent/husband has not chosen to file any appeal against the dismissal of his application in Application No.5230 of 2025 .

4. The learned counsel for the appellant submits that the impugned order of the learned Single Judge dated 10.12.2025 is unsustainable in law and facts. The appellant had sought interim custody of her minor son from Friday 5.00 PM to Sunday 5.00 PM every week. However, the learned Judge restricted visitation to three hours every Saturday at Vadivudaiamman Temple, Tiruvottiyur. The temple environment is crowded and noisy, wholly unsuitable for a child diagnosed with Autism Spectrum Disorder, who requires a calm, structured, and familiar atmosphere. Therapies for the child are conducted only on weekdays, and no evidence was produced to show that weekend custody would disrupt treatment. The appellant is educated, capable of administering the prescribed diet and medications, and has expressed willingness to share schooling and medical expenses. Photographs and records of the earlier interim visitation for a period of 71 days, as per the interim order, demonstrate the child's affection towards the

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mother. During the said visitation period, the respondent neither raised any objection nor sought revocation or modification of the visitation order. Restricting the appellant to three hours weekly reduces her role to a mere observer, depriving the child of maternal love and care, and violating the child's right to receive emotional security from both parents.

5. The learned counsel would further point out that three hours per week is grossly insufficient for a five-year-old child to bond with his mother and for the mother to perform her maternal duties of feeding, bathing, playing, and putting the child to sleep. There is no travel burden since the appellant resides in Ennore and the respondent in Tondiarpet, a distance of barely 10 kilometres. By contrast, the temple is crowded during weekends and festive months, creating sensory overload for the child. Moreover, being a woman, the appellant faces menstrual difficulties during specific periods, making temple attendance uncomfortable due to religious sentiments. In these circumstances, the learned counsel submits that the paramount interest of the child requires modification of the impugned order by granting weekend custody with the mother from Friday 5.00 PM to Sunday 5.00 PM every week, in a safe, quiet, and familiar environment conducive to the child's wellbeing.



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6. Learned counsel for the respondent submits that the respondent has been the primary caregiver of the autistic child for the past two and a half years and has ensured that the child receives the required therapies and medical treatment. It is also stated that, as noted in the psychometric evaluation report, the appellant faces certain difficulties in handling a child with autism. It is further submitted that the child requires regular and structured therapies and medical care, which may be disturbed if weekend custody is granted. Granting overnight custody to the appellant, when her ability to manage the child's special needs has not been clearly established, may not be in the best interests and welfare of the child.

7. In reply, learned counsel appearing for the appellant submits that Application No.5230 of 2025 filed by the respondent/husband, wherein allegations were made regarding the mental instability of the appellant and a prayer was made to summon her medical records, was dismissed by the learned Single Judge. The learned Single Judge held that, at that stage, the mental stability of the appellant could not be determined. Learned counsel further submits that the appellant is capable of taking care of the child and

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that there is no legal impediment for the appellant to exercise custody or visitation rights. It is also pointed out that the respondent has not chosen to challenge the said order of dismissal. It is further submitted that the appellant, being the mother, has been separated from the child for a considerable period and has deeply missed the child's presence. According to the learned counsel, the care, affection and companionship of the mother are essential for the emotional well-being and proper development of the child. It is therefore urged that the presence of the mother in the life of the child is of utmost importance and that she may be permitted to spend adequate time with the child in the interest of the child's welfare.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The admitted facts are that the appellant and the respondent are the parents of the minor child, Karvik Krishna, aged about five years, who has been diagnosed with Autism Spectrum Disorder and requires special care and continuous therapies. Due to matrimonial disputes, the parties are living



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separately and the minor child is presently in the custody of the respondent/father. The respondent has filed H.M.O.P.No.2558 of 2024 before the II Additional Family Court, Chennai, seeking divorce, while the appellant has filed H.M.O.P. No.2600 of 2025 before the III Additional Family Court, Chennai, seeking restitution of conjugal rights. The appellant has also filed O.P.No.498 of 2025 before this Court seeking permanent custody and guardianship of the minor child. Pending the said proceedings, she filed Application No.4808 of 2025 seeking interim custody of the child from Friday 5.00 p.m. to Sunday 5.00 p.m. every week.

10. The main contention of the respondent is that the minor child has been diagnosed with Autism Spectrum Disorder and requires continuous therapies, structured care and medical supervision. According to the respondent, he has been taking care of the child and ensuring that the child attends all required therapies. It is further contended that the appellant may not presently be in a position to handle a child with such special needs and therefore granting overnight custody may not be in the best interest of the child.



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11. It is also relevant to note that the respondent had filed Application No.5230 of 2025 seeking to summon certain medical records relating to the appellant. The learned Single Judge dismissed the said application observing that the question regarding the mental stability or otherwise of the appellant cannot be determined at that stage. Therefore, the allegations made by the respondent regarding the health condition of the appellant can be examined only during the course of trial in the main Original Petition upon production of evidence.

12. The learned Single Judge, while considering the materials placed on record and the condition of the child, declined to grant interim custody to the appellant as sought for and instead restricted her access to visitation rights for three hours every Saturday between 3.00 p.m. and 6.00 p.m. at Vadivudaiamman Temple, Tiruvottiyur.

13. The grievance of the appellant in the present appeal is twofold. Firstly, she seeks modification of the impugned order by granting her interim custody of the child from Friday 5.00 p.m. to Sunday 5.00 p.m. every week,



as originally prayed for. Secondly, she contends that the temple premises are usually crowded and not suitable for a child suffering from Autism Spectrum Disorder, and therefore the place of visitation requires modification.

14. The question whether the appellant is capable of taking care of the child, particularly a child with special needs, and the allegations raised by the respondent regarding the appellant's condition are matters which require proper examination on evidence. Such issues can be decided only in the main Original Petition for custody, after a full-fledged enquiry and upon production of relevant medical records and other materials.

15. The learned counsel for the appellant contended that the minor child is of tender age and therefore the custody should ordinarily be with the mother in view of Section 6(a) of the Hindu Minority and Guardianship Act, 1956. The said provision reads as follows:

“The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property, are—

(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.”



Though Section 6(a) of the Hindu Minority and Guardianship Act provides that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother, the said provision cannot be applied mechanically. The paramount consideration in matters relating to custody is always the welfare of the child. In the present case, though the minor child has crossed the age of five years, that by itself is not a decisive factor. The child has been diagnosed with Autism Spectrum Disorder and requires specialised care, structured therapy and continuous supervision. Therefore, the welfare and special needs of the child must be given due importance while considering the request for interim custody. The respondent has also raised certain contentions regarding the appellant's ability to take care of a child with such special needs. These aspects, relating to the appellant's health condition and her capacity to care for the child, require proper examination on the basis of evidence and can therefore be determined only during the course of trial in the main Original Petition for custody.

16. It is also not the case of the appellant that the respondent/father is acting against the welfare of the child or that he is not providing proper treatment and care. In view of the above facts and circumstances of the case,

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this Court is not inclined, at this stage, to grant weekend custody from Friday to Sunday as sought for by the appellant. Therefore, the arrangement made by the learned Single Judge, restricting the appellant to visitation rights instead of granting interim custody, does not warrant interference at this stage.

17. However, the grievance of the appellant regarding the place of visitation appears to be reasonable. The temple premises are generally crowded, particularly during weekends and festival seasons, and such an environment may not be conducive for a child with Autism Spectrum Disorder. Though the appellant suggested that visitation may be permitted at her residence, the respondent was not agreeable to the said proposal. In the circumstances, this Court finds it appropriate to modify the place of visitation so that the child may interact with the appellant in a comparatively calm and open environment.

18. Accordingly, while declining to grant interim custody of the child to the appellant at this stage, the place of visitation is modified from Vadivudaiamman Temple, Tiruvottiur to **Arignar Anna Park, Kathivakkam High School Road, Gandhi Nagar, Ennore, Chennai-600057**. The respondent shall bring and hand over the minor child to the

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appellant every Saturday between 3.00 p.m. and 6.00 p.m. at the said park, and after completion of the visitation period, the appellant shall return the child to the respondent at the same place.

19. It is made clear that the observations made in this order are only for the purpose of deciding the present appeal relating to interim visitation and shall not influence the learned Single Judge while deciding O.P.No.498 of 2025, which shall be decided independently on the basis of evidence and materials produced by the parties.

20. With the above modification regarding the place of visitation, this Original Side Appeal stands disposed of.

[P.V.J.] [K.G.T.J.,]
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Speaking Order
Neutral Citation case: Yes

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To
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The Sub Assistant Registrar,
(Original Side)
Madras High Court,
Chennai.



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P.VELMURUGAN. J.

and

K.GOVINDARAJAN THILAKAVADI, J.

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Judgement in
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