



2023/KER/62420

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 12TH DAY OF OCTOBER 2023 / 20TH ASWINA, 1945

OP (FC) NO. 616 OF 2023

AGAINST THE ORDER DTD 26/08/2023 IN IA NO.35/2023 IN GOP

189/2022 OF FAMILY COURT, KUNNAMKULAM

PETITIONER/RESPONDENT:

SAYANA

AGED 34 YEARS

D/O IQBAL MOHAMMED, PUTHUVEETTIL HOUSE,
THAIKKAD POST, GURUVAYOOR, CHAVAKKAD THALUK,
THRISUUR, PIN - 680104

BY ADV R. PADMAKUMARI

RESPONDENT/PETITIONER:

ABDUL RAZAK IBRAHIM

AGED 36 YEARS

S/O T.M. IBRAHIM, VALIYAPARAMBIL HOUSE,
RAYIRIMANGALAM DESAM, TANUR VILLAGE, TIRUR TALUK,
TANUR P.O., MALAPPURAM DISTRICT, PIN - 676302

THIS OP (FAMILY COURT) HAVING COME UP FOR FINAL HEARING
ON 12.10.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



O.P. (FC) No.616 of 2023

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AMIT RAWAL & C.S.SUDHA, JJ.

O.P. (FC) No.616 of 2023

Dated this the 12th day of October, 2023

J U D G M E N T

C.S.Sudha, J.

This original petition under Article 227 of the Constitution of India has been filed by the respondent/mother in I.A.No.35/2023 in G.O.P.No.189/2022 against Ext.P11 order dated 26/08/2023, by which the application for interim custody sought by the father has been allowed. The GOP was moved by the father seeking permanent custody of the child. I.A.No.36/2023 was filed by the mother to exempt her from producing the minor child before the Family Court. Both the applications were disposed of by Ext.P11 order. The parties in this proceedings will be referred to as described in I.A.No.35/2023 in G.O.P.No.189/2022.

2. G.O.P.No.189/2022 was filed by the father claiming permanent custody of the child in which he moved I.A.No.35/2023 seeking interim custody. The marriage between the petitioner/father and the respondent/mother has been dissolved by a foreign judgment and thereafter both have remarried. The respondent/mother is residing in Bangalore with her second husband. As per common order dated 04/10/2021 in I.A.No.6599/2019, I.A.No.6/2021, I.A.No.7/2021 and I.A.No.9/2021, the petitioner/father was allowed interim custody of the child during the first half of Onam, Christmas



and Summer vacations and he was also allowed to contact the child over telephone every Wednesdays and Sundays between 07:30 and 08:00 p.m. The respondent/mother preferred an appeal against the said order. This Court as per order dated 16/09/2022 in O.P.(FC)No.651/2021 refused to interfere with the said order. In I.A.No.35/2023, the petitioner sought for interim custody of the minor child during Onam Vacation.

3. The respondent/mother filed objection contending that the petitioner/father has also re-married and has three children out of the said wedlock. The petitioner has no love or affection for the minor child. It is also contended that the child is quite frightened to go to his father and that he has developed certain mental abnormalities. The child was referred to NIMHANS, Bangalore, where the child was diagnosed with oppositional defiant disorder (ODD). The doctor has advised that the child should not be sent to strange places. If the custody of the child is given to the petitioner/father, it would adversely affect the mental condition of the child. Therefore the contention is that the petitioner/father cannot be granted interim custody of the child.

4. I.A.No.36/2023 was filed by the respondent/mother through her power of attorney seeking exemption from producing the child before the court. In the said petition also, the same contentions as raised in the objection to I.A.No.35/2023 has been raised.

5. Both the applications were heard and disposed of by Ext.P11



order, the operative portion of which reads thus -

“The request of the petitioner to get custody of the child cannot be rejected in toto. The Dussehra holidays in Bangalore starts on 15th October (Navaratri) and lasted till 24th October (Vijayadasami). There will be enough time to prepare for travel from Bangalore also. The custody of the child can be granted to the petitioner on those holidays.”

Aggrieved, the respondent/mother has come up in appeal.

6. Heard both sides.

7. The learned counsel for the mother quite vehemently and persuasively argued that the child is suffering from ODD ; that from birth the child has been with the mother ; that the child does not like his father and if the child is sent along with the father, he would become a mental wreck and hence Ext.P11 order granting the petitioner/father custody of the child is to be set aside. If this Court is not inclined to set aside the entire order, at least overnight stay that has been granted, may be avoided, argues the learned counsel.

8. After going through the materials on record, we find that on earlier occasions too, custody of the child with overnight stay with the father had been granted. According to the learned counsel, the child started developing mental problems as he was sent along with his father against the child's wishes. It is seen that this Court has rejected the aforesaid contention in its earlier orders. The learned trial judge has also discussed this aspect in



paragraph 10 of Ext.P11 order and held that the love and affection of the father is also required to reduce the behavioral disorder of the child. We find no infirmity in Ext.P11 order.

9. It was further brought to our notice that Dussehra holidays of the child who is studying in Bangalore is from 20/10/2023 to 24/10/2023 and therefore it would not be possible to comply with the direction in Ext.P11 order for handing over custody of the child from 15/10/2023 to 24/10/2023. To that extent, Ext.P11 order would stand clarified. We make it clear that the child shall be handed over to the father during the Dussehra holidays whichever be the dates.

The original petition is disposed of on the above terms.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

AMIT RAWAL
JUDGE

Sd/-

C.S.SUDHA
JUDGE

ami/

APPENDIX OF OP (FC) 616/2023

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE MEMORANDUM OF GOP 1621/2019 ON THE FILES OF FAMILY COURT, THRISSUR
- Exhibit P2 TRUE COPY OF THE JUDGMENT IN WP (CRL) 126/2018 DATED 9-4-2018 ON THE FILES OF HON'BLE HIGH COURT OF KERALA
- Exhibit P3 THE TRUE COPY OF THE COMMON ORDER IN I.A 6599/2019, IA 6/2021, IA 7/2021 & IA 9/2021 DATED 4-10-2021 IN OP 1621/2019 ON THE FILES OF THE FAMILY COURT, THRISSUR
- Exhibit P4 THE TRUE COPY OF THE INTERIM ORDER DATED 31-3-2022 IN OP (FC) 651/2021
- Exhibit P5 THE TRUE COPY OF THE JUDGMENT IN OP (FC) 651/2021 DATED 16-09-2022
- Exhibit P6 THE MEDICAL REPORT DATED 6-12-2022 ISSUED BY THE DOCTOR AT NATIONAL INSTITUTE OF MENTAL HEALTH & NEURO SCIENCE, BANGLORE
- Exhibit P7 THE TRUE COPY OF THE ORDER IN OP(FC) 42/2023 DATED 2-2-2023 ON THE FILES OF THIS HON'BLE HIGH COURT
- Exhibit P8 THE TRUE COPY OF THE ORDER IN IA 30/2022 IN GOP 189/2022 DATED 5-4-2023 ON THE FILES OF THE FAMILY COURT; KUNNAMKULAM
- Exhibit P9 THE TRUE COPY OF THE IA 35/2023 IN GOP 189/2022 ON THE FILES OF FAMILY COURT, KUNNAMKULAM FILED BY THE RESPONDENT HEREIN
- Exhibit P9(a) THE ENGLISH TRANSLATION OF IA 35/2023 IN GOP 189/2022
- Exhibit P10 THE TRUE COPY OF THE COUNTER FILED BY THE PETITIONER HEREIN IN IA 35/2023 IN GOP 189/2022 ON THE FILES OF FAMILY COURT, KUNNAMKULAM
- Exhibit P10(a) THE ENGLISH TRANSLATION OF THE COUNTER FILED BY THE PETITIONER IA 35/2023 IN GOP 189/2022



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Exhibit P11

THE CERTIFIED COPY OF THE COMMON ORDER
IN IA 35/2023& 36/2023 IN GOP 189/2022
DATED 26-08-2023 ON THE FILES OF THE
FAMILY COURT, KUNNAMKULAM