

Deepakumar Vs. Manju

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Court : Kerala

Decided On : Jul-30-2013

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Deepakumar

Respondent : Manju

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN TUESDAY,THE 30TH DAY OF JULY 2013 8TH SRAVANA, 1935 Mat.Appeal.No. 260 of 2013 (B) ----- AGAINST THE ORDER IN OP 619/2013 of FAMILY COURT, ATTINGAL DATED 25 03-2013 APPELLANT/PETITIONER: ----- DEEPAKUMAR AGED 3 YEARS, S/O UNNI, AMMOMMA VEEDU, VAKKOM VILLAGE & DESOM, CHIRAYINKEEZHU TALUK, THIRUVANANTHAPURAM DIST., PIN 695308. BY ADVS.SRI.C.S.MANU SRI.S.K.PREMRAJ SMT.V.SARITHA SRI.T.B.SIVAPRASAD SRI.V.S.PREJITH SRI.SANDEEP.P.S. SMT.NEETHU.K.SHAJI RESPONDENT/PETITIONER: ----- MANJU, D/O.RAMASWAMY, AGED 2 YEARS, CHERUKALA HOUSE QUARTERS, NEAR MAPPILA UP SCHOOL, BABINCHA, CHERUKALA VILLAGE, KASARGODE 67112 . R1 BY ADV. ADV J JAYAKUMAR FOR CAVEATOR THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 30-07-2013, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING: ANTONY DOMINIC & P.D.RAJAN, JJ.

===== Mat. Appeal No. 260 OF
201.===== Dated this the 30th day of July, 2013

JUDGMENT

Antony Dominic, J.

OP No.619/13 was filed by the appellant before the Family Court, Attingal for a declaration that he is the guardian of his minor son Manjunath. By order dated 25th of March, 2013, Family Court, Attingal held that there is no territorial jurisdiction to entertain the petition and ordered that the petition be returned for presenting before the Family Court, Kasaragod. Parties were directed to appear before that Court on 15/4/13. It is challenging this order, the appeal is filed.

2. The case of the appellant is that he married the respondent on 1/6/2006 and that on 21/6/2007, the respondent gave birth to a child at the Government Hospital, Kasaragod. They initially resided at Kasaragod and thereafter shifted to Vakkom in Thiruvananthapuram District. It is stated that subsequently on 5/1/2011, the father of the respondent took her and the child to Kasaragod without his knowledge or consent. It is stated that thereafter the appellant visited the respondent and Mat.Appeal No.260/13 :

2. : the child and also had made arrangements for his education. It is alleged that on 25/9/12, the respondent turned down his request to return to the matrimonial home and that on 27/9/12, the appellant saw the child wearing ragged clothes and playing with street children. According to him, on seeing him, the child began to cry and in such circumstances, feeling sympathy for the child and to safeguard his welfare, he took the child and brought him to his native place and also put him in a school. It is thereafter that he filed the OP seeking to declare that he is the guardian of the child and for other consequential reliefs.

3. Respondent wife entered appearance and contended that the Court had no jurisdiction to entertain the petition. It is alleged that the appellant did not care either for the wife or the child and that from January, 2011, the respondent and the

child were living in Kasaragod. She also stated that the child was admitted in Mappila School and that on 27/9/12, the appellant took the child from Kasaragod and brought him to his house at Vakkom without the consent of the respondent. It is also alleged that after deserting her, the appellant married another woman by name Smt.Sindhu on 7/1/2012 and has a female child in that Mat.Appeal No.260/13 :

3. : relationship. According to the respondent, after removing the child from the jurisdiction of the Family Court, Kasaragod, the appellant filed OP before the Attingal Family Court on 3/10/12. Respondent contended that the child was not residing within the jurisdiction of the Family Court, Attingal and therefore for lack of territorial jurisdiction, the petition should be rejected. She also contended that, on merits, the petition was unsustainable.

4. Consequent on the directions of this Court in the judgment in OP(FC) No.909/13 and WP(Crl.) No.106/13, the Family Court recorded the evidence of both parties and also considered the issue of jurisdiction. Finally by the order impugned, the Family Court held that it had no territorial jurisdiction to entertain the petition and ordered to return the same. It is aggrieved by this order, the appeal is filed.

5. The facts pleaded by both sides show that from January, 2011, the respondent and the child were residing at Kasaragod within the jurisdiction of the Family Court, Kasaragod. The appellant admits that, on 27/9/12, he removed the child from the jurisdiction of that court and brought him to the jurisdiction of the Family Court, Attingal and filed the OP on 3/10/12. The Mat.Appeal No.260/13 :

4. : question is whether the above stay of the child can be said to be a 'residence' within the jurisdiction of the Family Court, Attingal to confer that Court with territorial jurisdiction to entertain the petition filed by the appellant. There are several precedents dealing with the meaning of the word 'residence' and these precedents are unanimous that to confer jurisdiction on the ground of residence, something more than a temporary stay is required and that what is required is a stay which is more or less of a permanent character and not a temporary abode.

6. In so far as this case is concerned, until 27/9/12, the child was residing permanently within the jurisdiction of the Family Court, Kasaragod along with his mother. He was also attending school there. It was after removing him from the jurisdiction of that court on 27/9/12, the OP in question was filed before the Family Court, Attingal on 3/10/12. Therefore, the 'residence' of the child within the jurisdiction of the Attingal Family Court was only during the period subsequent to 27/9/12, which is hardly of a week. There is nothing to infer that this temporary residence of the child within the jurisdiction of Attingal Family Court can be taken as 'residence' as contemplated in the Mat.Appeal No.260/13 :

5. : Family Courts Act to confer jurisdiction on that Court. In other words the conclusion of the Family Court, Attingal that it did not have jurisdiction to entertain the petition cannot be said to be an illegal one justifying interference in an appeal filed by the appellant.

7. At this stage, learned counsel for the appellant contended that at the time when the petition was filed, he had the custody of the child. According to him, the custody of the child was handed over to the respondent pursuant to the orders passed by the Family Court and that once Family Court has found that it has no jurisdiction to entertain the petition, the Family Court should also restore custody of the child to the appellant. Although prima facie, the argument appears to be attractive, what we notice is that while dealing with WP(Crl) No. 106/13, a Division Bench of this Court has passed order dated 12/3/13 enabling the respondent wife to get custody of the child and the order reads thus; "Respondents 1 to 3 in W.P.(Crl.) No.106/2013 are directed to ensure that Manju is able to take the child along with her to Chenkala House Quarters, Cherkula and is able to reside there peacefully, until fresh orders regarding the custody of the child are passed by the Family Court." Mat.Appeal No.260/13 :

6. :

8. A reading of the order of this Court shows that the respondent wife is entitled to have the custody of the child until the Family Court takes a final decision on the disputed issue of the custody of the child. Therefore, this request of the counsel also does not deserve consideration.

9. For the aforesaid reason, the order of the Family Court returning the petition is upheld. The appellant may get the petition returned for presentation before the Family Court, Kasaragod. Parties shall appear before that Court on 20/8/13. Sd/- ANTONY DOMINIC, Judge Sd/- P.D.RAJAN, Judge Rp //True Copy// PA TO JUDGE

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