

Divya.M.S vs Amith

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SooperKanoon Citation : sooperkanoon.com/1282741

Court : Kerala Orders

Decided On : Apr-04-2025

Judge : Honourable Mr. Justice Devan Ramachandran, Honourable Mrs. Justice M.B. Snehalatha

Appeal No. : OP (FC)/108/2024

Appellant : Divya.M.S

Respondent : AMITH

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN & THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947 OP (FC) NO. 63 OF 2024 AGAINST THE ORDER DATED IN IA 20/2022 IN GOP NO.1537 OF 2016, FAMILY COURT, THRISSUR PETITIONER/RESPONDENT IN IA NO.20/22 AND 40/2023 IN GOP NO.1537/2016 AND RESPONDENT IN GOP NO.1537/2016 OF FAMILY COURT, THRISSUR: DIVYA M.S, AGED 31 YEARS, D/O SUKUMARAN, MONEKATTU HOUSE, KANNARADESOM, NEAR COMPANYPADI, KANNARA P.O., THRISSUR DISTRICT,

REPRESENTED BY POWER OF ATTORNEY HOLDER
SUKUMARAN.M.N, AGED 71 YEARS, S/O NARAYANAN,
MONEKKATTU HOUSE, COMPANYPADI, KANNARA, PEECHI,
THRISSUR, PIN - 680652. BY ADVS. PRAVEEN K. JOY E.S.SANEEJ

RESPONDENT/PETITIONER IN IA NO.20/22 AND 40/2023 IN GOP
NO.1537/2016 AND PETITIONER IN GOP NO.1537/2016 OF FAMILY
COURT, THRISSUR:: -2- AMITH, AGED 37 YEARS, S/O SOMAN,
THANDASSERY HOUSE, PAZHUVIL WEST DESOM, KURUMBILAVU
VILLAGE, PAZHUVIL P.O WEST, THRISSUR TALUK, THRISSUR
DISTRICT, PIN - 680564. BY ADVS. DHANYA P.ASHOKAN
M.R.VENUGOPAL(K/000472/1994) S. MUHAMMAD
ALIKHAN(K/000644/2020) ATHULYA V.R.(K/000850/2021) THIS OP
(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
04.04.2025, ALONG WITH OP (FC).108/2024, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING: -3-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN
RAMACHANDRAN & THE HONOURABLE MRS. JUSTICE M.B.
SNEHALATHA FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH
CHAITHRA, 1947 OP (FC) NO. 108 OF 2024 AGAINST THE ORDER
DATED 04.11.2023 IN IA 26/2023 IN GOP NO.1537 OF 2023, FAMILY
COURT, THRISSUR PETITIONER/PETITIONER IN IA NO.26 AND 27
AND RESPONDENT IN GOP 1537/2016 OF FAMILY COURT,
THRISSUR: DIVYA.M.S, AGED 31 YEARS, D/O SUKUMARA,
MONEKATTU HOUSE, KANNARA DESOM, NEAR COMPANYPADI,
KANNARA P.O, THRISSUR DISTRICT, REPRESENTED BY POWER
OF ATTORNEY HOLDER, SUKUMARAN.M.N, AGED 71 YEARS, S/O
NARAYANAN, MONEKKATTU HOUSE, COMPANYPADI, KANNARA,
PEECHI, THRISSUR, PIN - 680652. BY ADVS. PRAVEEN K. JOY
E.S.SANEEJ RESPONDENT/RESPONDENT IN IA NO.26 AND 27 AND
PETITIONER -4- IN GOP 1537/2016 OF FAMILY COURT, THRISSUR::

AMITH, AGED 37 YEARS, S/O SOMAN, THANDASSERRY HOUSE, PAZHUVIL WEST DESOM, KURUMBILAVU VILLAGE, PAZHUVIL P.O, WEST, THRISSUR TALUK, THRISSUR DISTRICT, PIN - 680564. BY ADV. DHANYA P.ASHOKAN M.R.VENUGOPAL(K/000472/1994) S. MUHAMMAD ALIKHAN(K/000644/2020) ATHULYA V.R.(K/000850/2021) THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 04.04.2025, ALONG WITH OP (FC).63/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -5-

JUDGMENT

[OP (FC) Nos.63/2024, 108/2024]

Devan Ramachandran, J.

We propose to be as brief as possible in this judgment, advertent to the peculiar circumstances and facts presented.

2. We are disposing of both these Original Petitions together because, the factual circumstances involved are common.

3. The petitioner and the respondent were married, but divorced and admittedly, both of them are remarried now. They have a son of 11 years in their union and he is now caught between the fight of his parents regarding his custody. The petitioner-mother went to Canada to study and she moved I.A.No.26/2023 in G.O.P -6- Trissur, seeking permission to take the child

with her; while, the respondent filed I.A.No.20/2022 in the same G.O.P., seeking that he be given custody of the child, so as to take him to Dubai, where he was employed.

4. The learned Family Court dismissed

I.A.No.26/2023 filed by the mother holding that: If the child is taken to Canada there is no doubt at all that the child will be totally alienate from the father. Moreover in view of the diplomatic strain between India and Canada it will not be

possible to enforce any of the orders of the court at Canada. Suppose the petitioner and step father become citizen of Canada and the child also acquired citizenship at Canada there will be no purpose at all for -7- all these proceedings. None of the orders will be able to enforce and the father will not be able to exercise any of his right or to discharge his duty towards the child. The petitioner has no property in India whereas the respondent has no properties in India. So, I find that in no circumstances, the petitioner can be permitted to take the child to Canada. So there cannot be any direction to give authorization letter to the respondent (sic).

5. The learned Court then allowed I.A.No.20/2022, thus allowing the father to be in custody of the child. For ordering so, the learned Court concluded as under:

I find that in the happening of change of circumstance whereby child is alone it is necessary to give the custody of the child to the father of the child. It is also important to note that UAE is a reciprocating territory has notified by Central Government u/s -8- 44 A CPC. So it is easy to exercise the control over the child by the court. In these circumstances, I find that the father can be permitted to take the child to Dubai and to continue his education at Dubai after this academic year.

6. After ordering as above, the learned Family Court reserved certain rights in favour of the mother, to the following effect:

At the same time, the petitioner mother will be entitled for the custody of the child during the vacation period whenever she came back to India. Similarly the mother will be entitled for the custody of the child during every 2nd Saturday and Sunday (from 10 am on Saturday till 5 pm on Sunday). All the visitation rights now available to the father as per the mediation agreement and subsequent orders will be equally applicable to mother.

7. The petitioner challenges both these orders as being illegal and unlawful.

8. Sri.Praveen K. Joy - learned counsel for the petitioner-mother, submitted that his client is now returning to India permanently, and that, -9-

therefore, she is entitled to the custody of her child. He asserted that, by the liberty reserved to her in the afore extracted portion of the order, she is fully entitled to seek the same.

9. However, in refutation, Smt.Dhanya P. Asokan, learned Senior Counsel, instructed by Sri.M.R.Venugopal - learned counsel for the respondent-father, submitted that the order in question was not based on a summary procedure, but after allowing the parties to trial and adducing of evidence. She contended that, it is the welfare of the child which is paramount and

that this was specifically noticed by

-10- throughout; and that if she is to now return to India, then she may obtain a fresh cause of action, but cannot prosecute these Original Petitions.

10. There is some force in the afore submissions of the learned Senior Counsel because, by efflux of time and conduct of parties, the orders impugned here have already been implemented and are in operation.

11. The child is admittedly with the father in Dubai, handed over to him by the petitioner - mother, subsequent to the orders in question.

12. Indubitably, therefore, as and when the petitioner - mother returns to India, she surely will obtain a right to seek further custodial arrangements with respect to her son; -11- and this is inescapable even if specific liberty for this had not been reserved to her in the impugned orders. The Honble Supreme Court has

held it apodictically that every order of

permanent custody is essentially interlocutory in its tenor and that, should there be changed circumstances, the parties can seek modification or variation of the same appositely. In the case at hand, if the mother is to establish that she is back in India and thus to urge changed circumstances, we see no reason why

she cannot approach the learned Family Cour

proposition of law. In the afore circumstances, we close these Original Petitions, without intervening with the -12- impugned orders; but reserving every liberty that may be available to the parties as per law. Sd/- DEVAN RAMACHANDRAN JUDGE Sd/- M.B.SNEHALATHA akv JUDGE -13- APPENDIX OF OP (FC) 108/2024 PETITIONER EXHIBITS EXHIBIT P1 THE TRUE PHOTOCOPY OF THE POWER OF ATTORNEY EXHIBIT P2 TRUE PHOTOCOPY OF THE MEDIATION AGREEMENT IN GOP NO. 1537/2016 DATED 03.03.2017 OF FAMILY COURT THRISSUR EXHIBIT P3 TRUE PHOTOCOPY OF THE ORDER IN GOP NO. FAMILY COURT THRISSUR EXHIBIT P4 TRUE PHOTOCOPY OF THE ORDER IN OP NO. FAMILY COURT THRISSUR EXHIBIT P5 TRUE PHOTOCOPY OF THE ORDER IN IA NO. 22.04.2019 OF FAMILY COURT THRISSUR EXHIBIT P6 TRUE COPY OF THE JUDGMENT IN OP(FC) NO. 530/2019 DATED 11.10.2019 EXHIBIT P7 TRUE PHOTOCOPY OF THE COMMON ORDER IN

IA NO. 3707/2019 AND IA NO. 4070/2019 IN GOP NO. 1537/2016 OF FAMILY COURT, THRISSUR DATED 27.11.2019

EXHIBIT P8 TRUE PHOTOCOPY OF THE COMMON ORDER IN IA NO.18/2022 AND IA NO. 25/2023 IN GOP NO. 1537/2016 DATED 27.03.2023 OF FAMILY COURT, THRISSUR EXHIBIT P9 TRUE PHOTOCOPY OF THE PETITION -14- NUMBERED AS IA NO. 26/2023 IN GOP NO. THRISSUR EXHIBIT P10 TRUE PHOTOCOPY OF THE PETITION NUMBERED AS IA NO. 27/2023 IN GOP NO. COURT, THRISSUR EXHIBIT P11 TRUE PHOTOCOPY OF THE JUDGMENT IN OP(FC) 503/2023 DATED 10.08.2023 EXHIBIT P12 TRUE PHOTOCOPY OF THE JUDGMENT IN OP(FC) 319/2023 DATED 24.08.2023 EXHIBIT P13 TRUE PHOTOCOPY OF THE COMMON ORDER IN

IA NO. 26/2023 AND IA NO. 27/2023 IN OP NO. 1537/2016 OF THE FAMILY COURT, THRISSUR DATED 04.11.2023 -15-

APPENDIX OF OP (FC) 63/2024 PETITIONER EXHIBITS EXHIBIT P1 TRUE PHOTOCOPY OF THE POWER OF ATTORNEY EXHIBIT P2 TRUE PHOTOCOPY OF THE MEDIATION AGREEMENT IN GOP NO. 1537/2016 DATED 03.03.2017 EXHIBIT P3 TRUE PHOTOCOPY OF THE ORDER IN GOP

NO. COURT THRISSUR EXHIBIT P4 THE TRUE PHOTOCOPY OF THE ORDER
IN OP NO. COURT THRISSUR EXHIBIT P5 TRUE PHOTOCOPY OF THE
ORDER IN IA NO. 22.04.2019 OF FAMILY COURT THRISSUR EXHIBIT P6
TRUE COPY OF THE JUDGMENT IN OP(FC) NO. EXHIBIT P7 TRUE
PHOTOCOPY OF THE COMMON ORDER IN IA NO. 3707/2019 AND IA NO.
4070/2019 IN GOP NO. 1537/2016 OF FAMILY COURT, THRISSUR DATED
27.11.2019 EXHIBIT P8 TRUE PHOTOCOPY OF THE COMMON ORDER IN IA
NO.18/2022 AND IA NO. 25/2023 IN GOP NO. COURT, THRISSUR EXHIBIT P9
TRUE PHOTOCOPY OF THE PETITION NUMBERED AS IA NO. 26/2023 IN
GOP NO. 1537/2016 FILED BEFORE FAMILY COURT, THRISSUR EXHIBIT P10
TRUE PHOTOCOPY OF THE PETITION NUMBERED AS IA NO. 27/2023 IN
GOP NO. 1537/2016 -16- FILED BEFORE THE FAMILY COURT, THRISSUR
EXHIBIT P11 TRUE PHOTOCOPY OF THE JUDGMENT IN OP(FC) EXHIBIT
P12 TRUE PHOTOCOPY OF THE PETITION NUMBERED AS IA NO. 20/2022 IN
GOP NO. 1537/2016 OF THE FAMILY COURT, THRISSUR EXHIBIT P13 TRUE
PHOTOCOPY OF THE PETITION NUMBERED AS IA NO. 40/2023 IN GOP NO.
1537/2016 OF THE FAMILY COURT, THRISSUR EXHIBIT P14 TRUE
PHOTOCOPY OF THE OBJECTION IN IA NO. COURT, THRISSUR EXHIBIT
P15 TRUE PHOTOCOPY OF THE OBJECTION IN IA NO. COURT, THRISSUR
EXHIBIT P16 TRUE PHOTOCOPY OF THE JUDGMENT IN OP(FC) EXHIBIT
P17 TRUE PHOTOCOPY OF THE COMMON ORDER IN IA NO. 20/2022 AND IA
NO. 40/2023 IN OP NO. DATED 04.11.2023 EXHIBIT P18 TRUE PHOTOCOPY
OF THE MARRIAGE INVITATION LETTER

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