

Alphy Antony vs Tojo Mathew

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : OP (FC)/91/2023

Appellant : Alphy Antony

Respondent : Tojo Mathew

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, 1944 O.P.(FC) NO. 91 OF 2023 SPEEDY DISPOSAL OF O.P.(GW) NO.28 OF 2021 ON THE FILES OF THE FAMILY COURT, KOTTAYAM PETITIONER: ALPHY ANTONY, AGED 26 YEARS, DAUGHTER OF ANTONY JOSEPH, POLACKAL HOUSE, MADAPPALLY P.O, CHANGANACHERRY, KOTTAYAM DISTRICT, KERALA, PIN - 686546. BY ADVS. LUKE J CHIRAYIL ELSA MARY THOMAS AMAL JOSE RESPONDENT: TOJO MATHEW AGED 31 YEARS, SON OF MATHEW

K.J, KINATTUKARA HOUSE, KALAKETTI, VANJIMALA P.O., ELAMKULAM VILLAGE, KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT, KERALA, PIN - 686508. BY ADVS. SIBY CHENAPPADY ANU GEORGE AIBEL MATHEW SIBY ELANA ROSE SIBY ANEESH JAMES THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

P.G. Ajithkumar, J.

The respondent in O.P.(G&W) No.28 of 2021 on the file of the Family Court, Kottayam at Ettumanoor has filed this Original Petition under Article 227 of the Constitution of India. She seeks a direction to the Family Court to dispose of I.A.No.5 of 2023 in O.P.(G&W) No.28 of 2021 in a time bound manner.

2. On 22.02.2023, notice was directed to be served on the respondent. The respondent entered appearance through learned counsel.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

4. The petitioner is the mother and the respondent is

the father of the child, Therese Alphy Tojo, born on 19.01.2019. The respondent filed O.P.(G&W) No.28 of 2021 seeking permanent custody of the child. In the O.P., the respondent has filed I.A.No.3 of 2022 seeking interim custody of the child. After hearing both sides, the Family Court, ordered interim custody as follows:- In the result;

1. The petition is allowed.

2. The petitioner is permitted to have the interim custody of the minor Therese Alphy Tojo from 10 a.m. till 5 p.m. on every fourth Saturday.

3. The respondent shall produce the child within the premises of this court and the petitioner shall return the child to the respondent within the premises of this court.

5. The petitioner has filed I.A.No.5 of 2023 on

04.02.2023 seeking to modify the said order. She raised contention that the child has been suffering from various diseases and therefore, if the child is given in the custody of the respondent-father for such a long duration, i.e., from 10.00 a.m. to 5.00 p.m., it will cause much hardship to the child. Therefore, she wanted to modify the order.

6. The learned counsel appearing for the respondent

would submit that the petitioner did not obey the directions in Ext.P5 order hitherto and in order to get over action from the Family Court for the disobedience of the order, she has filed I.A.No.5 of 2023. Ext.P7 is a petition filed by the respondent before the Family Court in order to direct the petitioner- mother to produce the child before the court and to hand over the custody to the respondent in terms of Ext.P5 order dated 17.11.2022.

7. Truth or falsity of the contention of the petitioner

regarding the ailments of the child is not a matter to be considered in this proceeding, which is under Article 227 of the Constitution of India. From Ext.P7 and the submission of the learned counsel for the respondent, it appears that there occurred disobedience of Ext.P5 order by the petitioner. Considering the stand taken by the petitioner that the child has ailments, we deem it appropriate to direct the Family Court to dispose of I.A.No.5 of 2023 in a time bound manner. We make it clear that the said direction does not stand in the way of Family Court taking appropriate action in Ext.P7 application and also for proceeding against the petitioner if there is wilful disobedience on her part. This Original Petition is accordingly disposed of by directing the Family Court, Kottayam at Ettumanoor to dispose of I.A.No.5 of 2023 in O.P.(G&W) No.28 of 2021 within a period of one month from the date of production of a certified copy of this judgment. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr APPENDIX OF OP

(FC) 91/2023 PETITIONER EXHIBITS EXHIBIT P1 THE TRUE COPY OF THE ORIGINAL PETITION

NUMBERED AS O.P (G&W) NO: 28/2021 DATED 04.01.2021 ON THE FILES OF THE FAMILY COURT KOTTAYAM AT ETTUMANOOR

EXHIBIT P2 THE TRUE COPY OF THE OBJECTION IN O.P (G&W) NO: 28/2021 DATED 09.02.2021 ON THE FILES OF THE FAMILY COURT KOTTAYAM AT ETTUMANOOR EXHIBIT P3 THE TRUE COPY OF I.A NO: 3/2022 IN O.P. (G&W) NO: 28/2021 DATED 23.04.2022 ON THE FILES OF THE FAMILY COURT KOTTAYAM AT ETTUMANOOR EXHIBIT P3(A) THE TRUE COMPUTER TYPED COPY OF EXT.P3 EXHIBIT P4 THE TRUE COPY OF THE COUNTER IN I.A

NO: 3/2022 IN G&W O.P. NO: 28/2021 DATED 02.09.2022 ON THE FILES OF THE FAMILY COURT KOTTAYAM AT ETTUMANOOR EXHIBIT P5 THE TRUE COPY OF THE ORDER IN I.A NO: 17.11.2022 ON THE FILES OF THE COURT OF THE JUDGE FAMILY COURT, KOTTAYAM. EXHIBIT P6 THE TRUE COPY OF PETITION NUMBERED AS I.A NO: 5/2023 IN O.P NO: 28/2021 DATED 04.02.2023 ON THE FILES OF THE FAMILY COURT KOTTAYAM AT ETTUMANOOR

EXHIBIT P7 THE TRUE COPY OF I.A NO: 6/2023 IN O.P (G&W) NO: 28/2021 DATED 04.02.2023 ON THE FILES OF THE FAMILY COURT KOTTAYAM AT ETTUMANOOR EXHIBIT P8 THE TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY DR. GIRIJA MOHAN DATED 01.09.2022 EXHIBIT P9 THE TRUE COPY OF THE ECHOCARDIOGRAPHY REPORT ISSUED BY THE BELIEVERS CHURCH MEDICAL COLLEGE HOSPITAL, THIRUVALLA DATED 28.02.2019 EXHIBIT P10 THE TRUE COPY OF THE RADIOLOGY REPORT

ISSUED BY THE BELIEVERS CHURCH MEDICAL COLLEGE HOSPITAL, THIRUVALLA, IN FAVOR OF THE MINOR CHILD DATED 30.10.2021

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