

Thankachan vs Ramees

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Court : Kerala

Decided On : Apr-10-2023

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

Appeal No. : OP (FC)/156/2023

Appellant : Thankachan

Respondent : Ramees

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 10TH DAY OF APRIL 2023 / 20TH CHAITHRA, 1945 O.P.(FC) NO. 156 OF 2023 AGAINST THE ORDER DATED 16.03.2023 IN I.A.NOS.7 OF 2023 AND I.A.NO.5 OF 2022 IN O.P.NO.2377 OF 2021 ON THE FILE OF THE FAMILY COURT, THIRUVANANTHAPURAM PETITIONERS: 1 THANKACHAN AGED 68 YEARS, S/O. KOMALEYOSE, FREEDA BHAVANAM, SHANGHUMUGHAM, BEACH (P.O), THIRUVANANTHAPURAM, PIN - 695007. 2 DOLLY THANKACHAN, AGED 56 YEARS, BUSINESS, W/O. THANKACHAN, FREEDA

BHAVANAM, SHANGHUMUGHAM, BEACH (P.O), THIRUVANANTHAPURAM., PIN - 695007 BY ADVS. GOPAKUMAR R.THALIYAL C.M.EMMANUEL R.B.BALACHANDRAN RESPONDENT: RAMEES, AGED 29 YEARS, S/O. ABDUL RAHUMAN, MADAM VILAKAM, PULLOORKONAM, VIZHINJAM, THIRUVANANTHAPURAM, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER, ABDUL RAHUMAN, MADAM VILAKAM, PULLOORKONAM, VIZHINJAM, THIRUVANANTHAPURAM, PIN-695523, PIN - 695523. BY ADVS. R.SUNIL KUMAR A.SALINI LAL THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 10.04.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

P.G. Ajithkumar, J.

The petitioners are the maternal grandparents of three minor children, who are aged 9, 7 and 6 years. Their mother committed suicide on 02.09.2021. The children are in the custody of the petitioners. The respondent has filed O.P.No.2377 of 2021 before the Family Court, Thiruvananthapuram, seeking a decree declaring him the legal guardian of the children and allowing him the permanent custody. The petitioners filed I.A.No.7 of 2023 seeking interim custody of the children. They also filed I.A.No.5 of 2022 for impounding the passport of the respondent. The Family Court vide Ext.P12 order dismissed I.A.No.5 of 2022 and allowed the petitioners to have interaction with the children from 10.00 a.m. till 1.00 p.m. on every second Saturday. The petitioners challenge the order in I.A.No.7 of 2023 in this Original Petition filed under Article 227 of the Constitution of India.

2. On 29.03.2023, notice by Special Messenger was ordered to be served on the respondent. On receipt of the notice, the respondent entered appearance through his learned counsel.

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

4. The petitioners set forth several contentions and

allegations in support of their claim that custody of the children shall be entrusted with them. They claim that the children were with them and after getting their custody forcibly, the respondent instituted O.P.No.2377 of 2023. They have an allegation that the respondent is responsible for the death of Smt.Sandra, the mother of the children. The respondent refutes all such allegations and he contends that the petitioners are incapable of taking care of the welfare of the children. It is contended that the 1 st petitioner had mental derangement and therefore entrusting of the children with the petitioners is unsafe.

5. In Rohith Thammana Gowda v. State of

Karnataka & others [AIR 2022 SC 3511] the Apex Court reiterated the law that the welfare of the children is of paramount consideration in an enquiry regarding custody of children. The Apex Court also explained as to how far desire of the child has to be given importance. It was held as follows:

8. At the outset we may state that in a matter involving the question of custody of a child it has to be borne in mind that the question what is the wish/desire of the child is different and distinct from the question what would be in the best interest of the child. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to what would be in the best interest of the child is a matter to be decided by the court taking into account all the relevant circumstances. When couples are at loggerheads and wanted to part their ways as parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child. In the circumstances, we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to

claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, what would be the best

interest of the child concerned. In other words, welfare of the child should be the paramount consideration. In that view of the matter we think it absolutely unnecessary to discuss and deal with all the contentions and allegations in their respective pleadings and affidavits. (underline supplied)

6. Although the respondent raised a contention that

the 1st petitioner has mental disableness, there is nothing on record to probabalise the same. As held in the aforementioned decision, it is unnecessary to discuss all the contentions and allegations in the respective pleadings of the parties. When the mother of the children is no more, the maternal grandparents shall be allowed to interact with the children, it is especially so when their daughter committed suicide at an young age, leaving behind three children of tender age. There is no visible disqualification for the petitioners to be in custody of the children. In such circumstances, we are of the view that the Family Court ought to have given the children in the custody of the petitioners for more duration. Order of the Family Court dated 16.03.2023 in I.A.No.7 of 2023 (Ext.P12), is therefore liable to be modified. Now, it is summer vacation. Children can be given in the custody of the petitioners for more duration without affecting their studies. Accordingly, this Original Petition is disposed of by modifying Ext.P12 order to the extent that interim custody of the children shall be given to the petitioners from 17.04.2023 to 23.04.2023 and from 14.05.2023 till 21.05.2023. The petitioners shall get custody of the child at 10.00 a.m. from the residence of the respondent and drop back at 4.00 p.m. at the residence of the respondent. After the period of vacation,

the custody of the children shall be governed by Ext.P12 order

and the petitioners can approach the Family Court if any modification to the same is desired. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE
dkr APPENDIX OF OP (FC) 156/2023 PETITIONER EXHIBITS EXHIBIT P1
TRUE COPY OF THE CERTIFICATE OF MARRIAGE DATED 25.07.2013.
EXHIBIT P2 TRUE COPY OF THE COMPLAINT DATED 02.01.2017 SUBMITTED
TO THE SUB INSPECTOR OF POLICE, WOMEN'S POLICE STATION,
CANTONMENT, THIRUVANANTHAPURAM

EXHIBIT P3 TRUE COPY OF THE COMPLAINT DATED 04.01.2017 SUBMITTED TO THE STATE WOMEN'S COMMISSION, THIRUVANANTHAPURAM EXHIBIT P4 TRUE COPY OF THE CERTIFICATE DATED 15.09.2022 ISSUED BY THE PRINCIPAL, NSS PUBLIC SCHOOL, PERUMTHANNI, THIRUVANANTHAPURAM EXHIBIT P5 TRUE COPY OF THE PETITION IN O.P NO. DATED 12.10.2021 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM. EXHIBIT P6 TRUE COPY OF THE NOTICE DATED 19.08.2022 ISSUED FROM THE FAMILY COURT, THIRUVANANTHAPURAM EXHIBIT P7 TRUE COPY OF THE COMPLAINT DATED 13.09.2022 SUBMITTED BY THE PETITIONER BEFORE THE S.H.O, VIZHINJAM POLICE STATION EXHIBIT P8 TRUE COPY OF THE JUDGMENT DATED 28.09.2022 PASSED BY THIS HONBOLE COURT IN W.P (CRL) NO. 867/2022. EXHIBIT P9 TRUE COPY OF THE OBJECTION DATED 20.10.2022. EXHIBIT P10 TRUE COPY OF THE ORDER DATED 06.12.2022 IN I.A NO. 06/2022 IN O.P. NO. 2377/2021 PASSED BY THE FAMILY COURT, THIRUVANANTHAPURAM. EXHIBIT P11 TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 11.01.2023 IN I.A NO. EXHIBIT P12 TRUE COPY OF THE COMMON ORDER DATED

16.03.2023 PASSED BY THE FAMILY COURT, THIRUVANANTHAPURAM IN I.A NO. 7/2023 AND I.A NO. 5/2022 IN O.P. NO.

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