

Jyothy Anthraper vs Tomy Joseph

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Court : Kerala

Decided On : Dec-23-2022

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

Appeal No. : OP (FC)/714/2022

Appellant : Jyothy Anthraper

Respondent : Tomy Joseph

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR FRIDAY, THE 23RD DAY OF DECEMBER 2022 / 2ND POUSHA, 1944 AGAINST THE ORDER IN I.A.NO.8441 OF 2022 DATED 16.12.2022 IN O.P.No.2711 OF 2019 ON THE FILE OF THE FAMILY COURT, ERNAKULAM PETITIONER: JYOTHY ANTHRAPER, AGED 35 YEARS, D/O. KURIAN ANTHRAPER, ANTHRAPER HOUSE, HOUSE NO XI/4/E, KARUMALLOOR PANCHAYATH, NEAR JYOTHI NIVAS SCHOOL, U.C. COLLEGE P.O., ALUVA, ERNAKULAM, PIN - 683102 BY ADVS. C.G.PREETHA N.G.ANITHA DR.ABHILASH O.U. RESPONDENTS: 1

TOMY JOSEPH, AGED 40 YEARS, S/O. LATE JOSEPH JOHN, SRAMPICAL HOUSE, KUVEMPU ROAD, SHIMOGA KARNATAKA, PIN - 577201 2 JOHNY JOSEPH, AGED 53 YEARS, S/O. LATE JOSEPH JOHN, SRAMPICAL HOUSE, KUVEMPU ROAD, SHIMOGA, KARNATAKA, PIN - 577201 OTHER PRESENT: SMT K. MEERA- FOR RESPONDENT THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 23.12.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The petitioner filed O.P.No.2711 of 2019, on the file of the

Family Court, Ernakulam, seeking an order to declare her as the legal guardian of the minor children born in the wedlock with the 1st respondent herein and for granting permanent custody of the minor children. In that original petition, the 1st respondent herein filed I.A.No.8441 of 2022, seeking interim custody of minor children during Christmas vacation. In that interlocutory application, the Family Court passed Ext.P14 order, which reads thus;

Both parties are present. Heard. As consented by the parties and considering the welfare of the minor children, the respondent/mother is directed to give custody of the minor children to the petitioner/father from directed to 10.00 a.m to 4.00 p.m on 27.12.2022, 28.12.2022, 29.12.2022, 30.12.2022, 31.12.2022 and 01.01.2023. The respondent shall handover and take back the children from the premises of this Court. I.A. is allowed accordingly.

Feeling aggrieved, the petitioner is before this Court in this original petition invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, seeking an

order to quash the said order.

2. On 22.12.2022, when this original petition came up

for admission, this Court issued notice on admission to the respondents. The learned counsel for the petitioner was permitted to take out notice to the respondents through their counsel before the Family Court, Ernakulam, where O.P.No.2711 of 2019 is pending consideration.

3. Today, when this matter is taken up for consideration, the respondents entered appearance through counsel.

4. Heard the learned counsel for the petitioner and also the learned counsel for the respondents.

5. The learned counsel for the petitioner would assert

that the petitioner never consented for interim custody of the minor children to the 1st respondent during Christmas vacation, as stated in Ext.P14 order. The mother has filed Ext.P18 interlocutory application pointing out the said fact, which is now pending consideration before the Family Court, Ernakulam. Placing reliance Exts.P15 to P17 medical certificates, the learned counsel would point out that the minor children are not keeping well.

6. On the other hand, the learned counsel for the respondents would assert that Ext.P14 order is an order passed on consent and therefore the contentions raised in this original petition are untenable.

7. Having considered the submissions made by the

learned counsel on both sides, we find that, if there is any error apparent on the face of Ext.P14 order, it is for the petitioner to point out the same to the Family Court, by filing an appropriate application. If the minor children are not keeping well, the said fact can also be brought to the notice of the Family Court, since the paramount consideration of the court while dealing with such matters is the welfare of the minor children.

8. It is pointed out by learned counsel on both sides that O.P.No.2711 of 2019 now stands posted before the Family Court on 24.12.2022 (tomorrow), for orders in another interlocutory application.

9. Article 227 of the Constitution of India deals with

power of superintendence over all courts by the High Court. Under clause (1) of Article 227 of the Constitution, every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

10. In *Shalini Shyam Shetty v. Rajendra Shankar*

Patil [(2010) 8 SCC 329] the Apex Court, while analysing the scope and ambit of the power of superintendence under Article 227 of the Constitution, held that the object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

11. In *Jai Singh v. Municipal Corporation of Delhi*

[(2010) 9 SCC 385], while considering the nature and scope of the powers under Article 227 of the Constitution of India, the Apex Court held that, undoubtedly the High Court, under Article 227 of the Constitution, has the jurisdiction to ensure that all subordinate courts, as well as statutory or quasi-judicial tribunals exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The exercise of jurisdiction must

be within the well recognised constraints. It cannot be exercised

like a 'bull in a china shop', to correct all errors of the judgment

of a court or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

12. In *K.V.S. Ram v. Bangalore Metropolitan Transport Corporation* [(2015) 12 SCC 39] the Apex Court

held that, in exercise of the power of superintendence under

Article 227 of the Constitution of India, the High Court can interfere with the order of the court or tribunal only when there has been a patent perversity in the orders of the tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted.

13. In *Sobhana Nair K.N. v. Shaji S.G. Nair* [2016 (1)

KHC 1] a Division Bench of this Court held that, the law is well settled by a catena of decisions of the Apex Court that in proceedings under Article 227 of the Constitution of India, this Court cannot sit in appeal over the findings recorded by the lower court or tribunal and the jurisdiction of this Court is only

supervisory in nature and not that of an appellate court. Therefore, no interference under Article 227 of the Constitution is called for, unless this Court finds that the lower court or tribunal has committed manifest error, or the reasoning is palpably perverse or patently unreasonable, or the decision of the lower court or tribunal is in direct conflict with settled principles of law.

14. In view of the law laid down in the decisions referred

to supra, the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India cannot sit in appeal over the findings recorded by a lower court or tribunal. The supervisory jurisdiction cannot be exercised to correct all errors of the order or judgment of a lower court or tribunal, acting within the limits of its jurisdiction. The correctional jurisdiction under Article 227 can be exercised only in a case where the order or judgment of a lower court or tribunal

has been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. Therefore, no interference under Article 227 is called for, unless the High Court finds that the lower court or tribunal has committed manifest error, or the reasoning is palpably perverse

or patently unreasonable, or the decision of the lower court or tribunal is in direct conflict with settled principles of law or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted.

15. In exercise of the supervisory jurisdiction under

Article 227 of the Constitution of India, this Court is not sitting in appeal over Ext.P14 order dated 16.12.2022 of the Family Court, Ernakulam. We find no grounds to interfere with Ext.P14 order. If there is any error apparent on the face of Ext.P14 order, it is for the petitioner to point out the same to the Family Court, by filing an appropriate application.

In such circumstances, without prejudice to the aforesaid right of the petitioner, this original petition is dismissed, declining interference on Ext.P14 order. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE MIN APPENDIX OF OP (FC) 714/2022 PETITIONER EXHIBITS EXHIBIT P1 THE TRUE COPY OF THE PETITION IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE PETITIONER DATED 18.11.2019 EXHIBIT P2 THE TRUE COPY OF THE INJUNCTION PETITION IN I.A.NO 6347 OF 2019 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE PETITIONER DATED 18.11.2019

EXHIBIT P3 THE TRUE COPY OF THE ORDER IN I.A.NO 6347 OF 2019 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM DATED 18.11.2019 EXHIBIT P4 THE TRUE COPY OF THE OBJECTION AND THE COUNTER CLAIM IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE 1ST RESPONDENT DATED 07.12.2022 EXHIBIT P5 THE TRUE COPY OF THE PETITION IN I.A.NO 1940 OF 2021 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE 1ST

RESPONDENT DATED 03.04.2021 EXHIBIT P6 THE TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A.NO 1940 OF 2021 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE PETITIONER DATED 12.04.2021 EXHIBIT P7 THE TRUE COPY OF THE ORDER IN I.A.NO 1940 OF 2021 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM DATED 07.05.2021

EXHIBIT P8 THE TRUE COPY OF THE PETITION IN I.A.NO 1923 OF 2022 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE 1ST RESPONDENT DATED 05.03.2022 EXHIBIT P9 THE TRUE COPY OF THE OBJECTION IN I.A.NO 1923 OF 2022 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE PETITIONER DATED 07.04.2022 EXHIBIT P10 THE TRUE COPY OF THE ORDER IN I.A.NO 1923 OF 2022 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM DATED 26.04.2022 EXHIBIT P11 THE TRUE COPY OF THE JUDGMENT IN O.P. (F.C.)NO 255 OF 2022 ON THE FILE OF THIS HON'BLE COURT DATED 22.08.2022 EXHIBIT P12 THE TRUE COPY OF THE PETITION IN

I.A.NO 8441 OF 2022 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE 1ST RESPONDENT DATED 03.12.2022 EXHIBIT P13 THE TRUE COPY OF THE OBJECTION IN I.A.NO 8441 OF 2022 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE PETITIONER DATED 03.12.2022 EXHIBIT P14 THE TRUE COPY OF THE ORDER IN I.A.NO 8441 OF 2022 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM DATED 16.12.2022 EXHIBIT P15 THE TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE SENIOR CONSULTANT DEPARTMENT OF UROLOGY, RAJAGIRI HOSPITAL, ALUVA DATED 17.11.2022 EXHIBIT P16 THE TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY SENIOR CONSULTANT, DEPARTMENT OF PAEDIATRICS, APOLLO ADLUX HOSPITAL KARUKUTTY, ANGAMALY, ERNAKULAM DATED 06.12.2022 EXHIBIT P17 THE TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE SENIOR CONSULTANT DEPARTMENT OF PAEDIATRICS,

RAJAGIRI HOSPITAL, ALUVA DATED 17.12.2022 EXHIBIT P18 THE TRUE COPY OF THE UNNUMBERED

APPLICATION I.A.NO.OF 2022 IN I.A.NO 8441 OF 2022 IN O.P.NO 2711 OF 2019 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE PETITIONER DATED 22.12.2022

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