

B. Kamsala Vs. Bommi,

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SooperKanoon Citation : sooperkanoon.com/828932

Court : Chennai

Decided On : Oct-13-2004

Reported in : AIR2005Mad101

Judge : K.P. Sivasubramaniam and ;R. Banumathi, JJ.

Acts : [Guardians and Wards Act, 1890](#) - Sections 7

Appeal No. : H.C.P. No. 1070 of 2004

Appellant : B. Kamsala

Respondent : Bommi, ;The Inspector of Police and the Superintendent of Police

Advocate for Def. : S. Sairaman, Adv. for 1st Respondent and ;M.K. Subramaniam, Govt. Adv. (Criminal) for Respondents 2 and 3

Advocate for Pet/Ap. : E. Ulaganathan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R. Banumathi, J.

1. Petitioner is the Paternal Grandmother of the minor Child Kaviya. Petitioner has filed this petition for issuance of a direction/Writ of Habeas Corpus directing the

Respondents to produce the minor Child, namely, Kaviya. The First Respondent is the Maternal Grandmother of the minor Child.

2. Learned Counsel for the Petitioner seeks for issuance of direction for the custody of the Child contending that the First Respondent being a Christian, is trying to convert the Child into Christianity, which would be highly prejudicial to the interest of the Child, since the Child was born to her son Vadivelu, who was a Hindu by birth.

3. Father and Mother of infant Child Kaviya are no more. It remains to be seen, as to which of the Grandparents, the custody of the infant Child has to be given. The bona fide of the claim of the Petitioner and the First Respondent has to be seen. Further, the visitation right of either party is also to be determined. These are all the issues which are to be resolved by adducing facts and evidence and appreciation of evidence. Chapter II of The [Guardians and Wards Act, 1890](#), deals with Appointment and Declaration of Guardians. Section 7 deals with Power of the Court to make order as to guardianship.

4. Right to custody of the minor Child is thus to be agitated before the appropriate Forum by adducing evidence as to the interest of the minor Child and others. Direction as to the custody of the minor Child cannot be issued in a Habeas Corpus proceeding. A Division Bench of this Court, by an order in H.C.P.No.540 of 2002 dated 16.4.2002 (Mrs. Malini Angelina v. Sub-Inspector of Police for Women, Karur and 4 Ors.), held that a Habeas Corpus Petition is not maintainable relating to the custody of a minor Child.

5. We dismiss the Petition on the ground that this Habeas Corpus Petition is not maintainable. However, the Petitioner is at liberty to approach the appropriate Forum to get the right of the custody of the Child.