
(2014) 05 KL CK 0032
In the High Court Of Kerala
Case No : WP (Crl.) No. 202 of 2014 (S)

Josan Abraham

APPELLANT

Vs

The Sub Inspector of Police

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : (2014) 05 KL CK 0032

Hon'ble Judges : P. Ubaid, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : V. Philip Mathew, Advocate for the Appellant; Kochumol Koduvath, Adv., Sr. G.P for DGP for R1, Sri S. Rajeev, Sri P. Haridas and Smt. S. Sikky, Advocates for R2, Advocate for the Respondent

Judgement

C.K. Abdul Rehim, J.—This writ petition is filed seeking writ of Habeas Corpus directing production of minor child of himself and the 2nd respondent, Master Aadish Abraham Josan. Various litigations between the petitioner and the 2nd respondent were subject matter of appeals before this Court by both the parties. In Ext.P2 common judgment those appeals were disposed of by this court, recording the settlement arrived, which forms part of Ext.P2 judgment. It is provided that the custody of Master Aadish Abraham Josan will be with the 2nd respondent, subject to condition that custody will be given to the petitioner during half of the vacations of Onam, Christmas and Mid Summer. Further, on attaining the age of 18 years the child will be given freedom to live either with the petitioner or with the 2nd respondent.

2. It is alleged that, in violation of the condition incorporated in the settlement, the 2nd respondent had not given custody of the minor child during this vacation period, despite specific request made by the petitioner through Ext.P3 notice. It is also alleged that the 2nd respondent is attempting to take the minor child abroad to prevent the petitioner from having custody and acquaintance with the child.

3. The petitioner, 2nd respondent and the child are present before this court on

today. We interacted with all of them separately. It seems that the child is not willing to go with the petitioner since he is not having any free acquaintance and mental affection towards him. The 2nd respondent expressed the view that she has no objection in sending the child along with the petitioner in compliance with the conditions incorporated in the settlement. But it is stated that the child is not at all willing to go along with the petitioner. Considering the factual situation as mentioned above, this court is of the opinion that the matter can be dealt with by the Family Court, in execution of Ext.P2 judgment. Exhibit P2 is the judgment in appeal against OP (G&W) No.506/2006 on the files of the Family Court, Alappuzha. It is submitted that the jurisdiction has since been bifurcated at the place of the residence of the 2nd respondent will now fall within the limits of the Family Court, Mavelikkara. We direct both the parties to appear before the Family Court, Mavelikkara along with child on 22-05-2014 at 11 a.m. The Family Court, Mavelikkara is directed to deal with the matter on the basis of Ext.P2 judgment in which terms of the compromise is incorporated. The Family Court will take necessary steps to provide interim custody of the child after giving necessary counseling, for the rest of the period of this vacation. Orders in this regard shall be passed by the Family Court at the earliest possible, if necessary after providing facilities for acquaintance of the child with the petitioner during the court hours. The Family Court will deal with the matter as if it is an execution petition filed in Ext.P2 judgment of this court. The parties will produce copy of the Decree passed by the Family Court in OP (G&W) No.506/2006 and copy of Ext.P2 judgment of this court containing the settlement agreement, dated 18-12-2013, along with a copy of this writ petition before the Family Court, Mavelikkara.