

PM wrong about child custody cases, say lawyers and retired judge
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By V. Anbalagan

An apex court's decision has scuttled the prime minister's contention that the two bitter custody battles between Muslim and non-Muslim spouses can be settled amicably at the Federal Court, say lawyers and a retired judge.

Short of saying Datuk Seri Najib Razak does not know what he is talking about, the lawyers and the retired judge said the cases involving clerk S. Deepa and kindergarten teacher M. Indira Gandhi, cannot proceed any further from the High court, until their former husbands return the children to the mothers.

They pointed out that Deepa and Indira's former husbands, who had converted to Islam, had clearly disobeyed High court orders by not returning the children to the mothers.

Until the two ex-husbands return the children, there is no way the cases can go any further, let alone to the Federal Court, they said.

Deepa's former husband Izwan Abdullah and Indira's former spouse Muhammad Ridzuan Abdullah had filed appeals in the Court of Appeal against the High court rulings giving the mothers custody. But both Izwan and Ridzuan are still holding on to their children.

Lawyers said a legal precedent had been set when the Federal Court in 2010 refused to hear a leave to appeal application in a similar interfaith conversion case.

A five-man bench chaired by the then chief justice Tun Zaki Azmi in 2010 rejected S. Shamala's application as she was in contempt of court following action taken against her by her husband.

A High Court in 2002 had granted Shamala custody of her children on condition her Muslim convert husband Dr Muhammad Ridwan Mogarajah (Jeyaganesh C. Mogarajah), had access to his two children and that she did not bring up the children in the Hindu faith.

The husband had earlier unilaterally converted the children to Islam.

Shamala, however, left the country with the children in 2004 but filed her court papers for lawyers to carry out her battle in her absence.

The Court of Appeal referred the matter to the Federal Court as this involved a constitutional issue. The Federal Court, however, threw out Shamala's leave application as she had defied the High Court order by taking her children away.

The judge and the lawyers said Shamala's case would very likely bind Izwan and Ridzuan who had violated High Court orders granting custody of their children to their ex-wives.

On April 7, the High Court in Seremban had granted Deepa the custody of her two children on the grounds that her marriage with Izwan was registered under the civil law. Two days later, Rizwan abducted his son, Mithran, from Deepa's home in Jelebu.

Lawyer Aston Paiva, who is representing Deepa, told The Malaysian Insider that committal proceedings would be filed against Izwan later this week.

In another case, the Ipoh High Court found Ridzuan guilty of contempt of court for refusing to hand over his daughter Prasana Diksa to Indira.

A High Court in 2010 had granted custody of Prasana to Indira but Ridzuan has been holding on to his daughter.

Deepa and Indira have also obtained recovery orders from the court to compel the police to locate and reunite the children with their mothers but the police are refusing to budge, giving the excuse that the Shariah courts have granted the father custody of the children.

A retired Federal Court judge said the Federal Court had used its discretion in refusing to hear Shamala's appeal.

"The Court of Appeal will probably decline to hear the appeals of Izwan and Ridzuan going by the precedent set in the Shamala case," said the ex-judge who declined to be identified.

He said in the case of Izwan, he not only violated the High Court order, but appeared to have committed a crime by taking away his son from the lawful custody of the mother.

Lawyer Benjamin Dawson said Izwan and Ridzuan's actions now raised the question of whether the appellate court would hear their appeals.

"They would have to return the children to their mothers and accept whatever decision imposed by the court for being in contempt," he said.

Ravi Neko, who was in the legal team to represent Shamala in the Federal Court, said they argued before the apex court that the leave application must be heard due to special circumstances of the case.

"We wanted the court to give leave to appeal and determine whether a single spouse can convert their children without the knowledge and permission of the other spouse," he said.

Ravi said it was unfortunate that the Federal Court then abdicated its constitutional duty when it dismissed Shamala's application on technical grounds.

"I do not agree with the Federal Court ruling as it had lost a rare opportunity to determine key constitutional issues like the rights of parents to determine the religion of their underaged children," he said. – June 18, 2014.

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