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MOOT PROBLEM
LL.B. SEM V 3 YEAR

FACTS OF CASE:

1. **Sudhir Verma and Shweta Verma** married in 1988. Two minor children, Nil and Mona, aged 7 and 3 years were born to them. Sudhir and Shweta with their two children and Sudhir's mother (age of 80 years) were staying together in U.S.A. the spouses had set up their matrimonial home in England where the wife was working as a clerk and the husband as a bus driver. The boy is a British citizen, having been born in England, and he holds a British passport. Shweta's conduct was not very satisfactory. Soon after serious differences arose between the two. **Sudhir** initiated proceedings for dissolution of his marriage in the District Court of Tarrant County, Texas, U.S.A. in 1995. American Court granted divorce and sole custody of children to father. In the said proceedings interim orders were passed from time to time with respect to the care and custody of the children to Sudhir and visitation rights to **Shweta**.
2. Even while the divorce proceedings were pending **Sudhir** and **Shweta** lived together from November, 1996 to March, 1997. They again separated. This time **Shweta** had taken the children along with her.
3. On 7.5.1997 **Shweta** had picked up the children from **Sudhir's** residence in exercise of her visitation rights. She was to leave the children in the school the next day morning. **Sudhir** got the information from the school that the children were not brought back to the school. On making inquiries he came to know that **Shweta** had vacated her apartment and gone away somewhere.
4. He had, therefore, informed the police and a warrant for her arrest was also issued. It was further revealed that **Shweta** had, without obtaining any order from the American Court, flown away to India with the children.

5. On 12.6.1997 a divorce decree was passed by the Associate Judge and in view of the conduct of **Shweta** he has also passed an order declaring that the sole custody of the children shall be of **Sudhir**. She had been denied even the visitation rights.
6. **Sudhir** then filed a petition in the Delhi High Court on 9.9.1997. **Shweta's** contention in the reply to the petition was that by virtue of the orders dated 5.2.1996 and 2.4.1997 she and **Sudhir** were both appointed as Possessor Conservators and, therefore, on 7.5.1997 both the children were in her lawful custody.
7. She had brought the children to India with full knowledge of **Sudhir**. **Sudhir** is not a person to be given physical custody of the children as he is alcoholic and violent as disclosed by the material on record of the divorce proceeding.
8. The High Court held that in view of the interim orders passed by the American Court **Shweta** committed a wrong not informing that Court and taking its permission to remove the children from out of the jurisdiction of that Court.
9. The High Court took note of the fact that a competent Court having territorial jurisdiction has now passed a decree of divorce and ordered that only the father i.e. **Sudhir**, shall have the custody of the children. The High Court rejected the contention of **Shweta** that the decree of divorce and the order for the custody of the children were obtained by **Sudhir** by practicing fraud on the Court and further observed that even if that is so, she should approach the American Court for revocation of that order. Taking this view the High Court allowed the writ petition and gave the directed **Shweta** to restore the custody of two children. The passports of children were also ordered to be handover to **Sudhir** and declared that **Sudhir** to take the children to USA without any hindrance.
10. Hence appeal is filed before Supreme Court against the judgment and order of the High Court of Delhi in Writ Petition (Crl.) No. 656 of 1997.