



CNR: KAHC010381152026

NC: 2026:KHC:45403-DB
MFA No. 3981 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

MISCELLANEOUS FIRST APPEAL NO.3981/2026(GW)

BETWEEN:

SRI. REDDY VENKATESH KAKIMAANI
S/O KAKIMAANI PANDURANGAIAH GUPTHA,
ADOPTIVE FATHER OF THE MINOR CHILD,
AGED ABOUT 42 YEARS,
HINDU MALE,
FLAT NO. 302, NISHI PALACE APARTMENTS,
NO. 225, 9TH MAIN, 1ST BLOCK,
HRBR LAYOUT, BENGALURU – 560 043.

...APPELLANT

(BY SRI. AMARDEEP, ADVOCATE)

AND:

SMT. AKSHATA RADHAKRISHNA NAIK
W/O SRI. REDDY VENKATESH KAKIMAANI,
AGED ABOUT 36 YEARS,
PREVIOUSLY RESIDING AT:
PERUMEPOIKAYIL HOUSE, CHINNAMMA GARDEN,
SUBBAIAHNAPALYA, NEAR AYYAPPA TEMPLE,
BANASWADI, BENGALURU – 560 033.
CURRENTLY RESIDING AT:
NO. 108, 1ST FLOOR, 2ND E CROSS,
OMBR LAYOUT, BANASWADI,
BENGALURU 560 033.

...RESPONDENT

(BY SRI. AZHAR MEER, ADVOCATE)

Digitally
signed by
MALA K N
Location:
High Court
of Karnataka



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THIS MFA FILED U/S.47 (A) OF GUARDIAN AND WARDS ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DT 24.11.2025 PASSED IN G AND WC NO.301/2025 ON THE FILE OF THE II ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

The petitioner, an adoptive father of a minor child has preferred this appeal, being aggrieved by the order dated 24.11.2025 passed by the Court of II Additional Principal Judge, Family Court at Bengaluru ('the Family Court' for short), in G & WC No.301/2025, whereby the Family Court has rejected his petition.

2. For the sake of convenience, the parties shall be referred to as they were arrayed before the Family Court.

3. Brief facts of the case are, the petitioner instituted G&WC No.301/2025 before the Family Court



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under Sections 7 and 17 of the Guardians and Wards Act, 1890 ('G&W Act' for brevity), seeking to be appointed as the *legal guardian* of the minor child, Master Avyaan Gujar and for grant of permanent custody. The petitioner contended that he had married the respondent on 22.08.2024 and that, prior to and at the time of the marriage, both of them had agreed that he would assume the role and responsibilities of the father of the minor child. According to him, a Dattaka Sweekara ceremony was performed during the marriage in the presence of family members, relatives and priests. He relied upon the temple records and photographs to contend that the child was accepted by him in adoption and that, thereafter, the child lived with both parties in the matrimonial home. The petitioner further asserted that he took responsibility for the child's education, health, nutrition and day-to-day needs and that a strong emotional bond developed between him and the child.



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4. The petitioner further pleaded that the parties had jointly approached the Child Welfare Committee for completing the formal adoption process and that the biological father had also relinquished his rights in the proceedings before the Bandra Family Court. It was his case that the respondent subsequently left the matrimonial home on 04.07.2025, taking the minor child with her, and thereafter denied him access to the child. According to the petitioner, the unilateral removal of the child from the matrimonial home and the denial of access caused serious emotional distress and furnished the immediate cause of action for the proceedings. He therefore maintained that the question of his status as an adoptive father, the validity of the adoption and above all, the welfare of the minor were matters requiring adjudication on evidence and could not be shut out at the threshold.

5. Along with the main petition, the petitioner filed an application under Section 12 of the G&W Act read with



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Section 151 of the Code of Civil Procedure, seeking an ad-interim *ex parte* order permitting him to have visitation with the minor child every day between 4.00 p.m. and 7.00 p.m. at the play area of his apartment at The Canopy Apartment, Horamavu, Bengaluru, pending disposal of the main petition. The application was founded on the petitioner's assertion that he had been discharging the role of a father, that the child had been residing with him in the matrimonial home and that there existed a close emotional bond between them.

6. The Family Court, while considering the said application, noted that the minor was then in the care and custody of the respondent. Since the respondent had initially refused to receive the hand notice, the Court considered it necessary to hear her before passing orders on the application and directed issuance of notice on both the main petition and the application, with a direction for production of the child through the jurisdictional police. Subsequently, the matter was referred to mediation at the



instance of both parties and the respondent was directed to bring the child so that the petitioner could meet the child during the mediation proceedings. The Court also permitted video interaction with the minor twice a week for a limited duration, subject to prior intimation.

7. The respondent opposed the petition principally on the ground that she is the biological mother and natural guardian of the minor child and that she is alive, fit and competent to discharge her parental responsibilities. According to the respondent, the petitioner was only her step-father and could not claim the status of a natural guardian under the applicable law. Placing reliance upon Section 19(b) of the G&W Act and Section 6 of the Hindu Minority and Guardianship Act, 1956, she contended that, so long as the biological mother is alive and has not been found unfit, the Court has no jurisdiction to appoint or declare another person as guardian of the child. She further contended that Sections 7 and 17 of the G&W Act could operate only where appointment of a guardian was



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necessary for the welfare of the minor and that the petitioner had neither pleaded nor established that she was unfit to care for the child.

8. The respondent also contended that the minor had been continuously under her care since birth and that the petitioner had been married to her for only about a year. She asserted that she and her parents had undertaken the child's education, health and day-to-day requirements and that the petitioner had not assumed any substantial responsibility for the child's welfare. She, therefore, maintained that the welfare of the child required that custody remain with the biological mother. The respondent's objections to the application under Section 12 were substantially founded on the same grounds and the record shows that the respondent adopted her objections to the main petition as objections to the interim visitation application as well.



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9. The respondent thereafter filed I.A. No.5 under Order VII Rule 11 of the Code of Civil Procedure, seeking rejection of the petition at the threshold. The principal contention was that the petition was barred by Section 19(b) of the G&W Act, since the respondent, being the biological mother of the minor, was alive, fit and competent to act as the child's natural guardian. It was contended that the petitioner, being only a step-father, had no locus to seek appointment as guardian and that the statutory bar contained in Section 19 operated notwithstanding the general power conferred under Sections 7 and 17 of the G&W Act. The respondent further relied upon Section 6 of the Hindu Minority and Guardianship Act, to contend that a step-father is not included within the category of natural guardians.

10. The respondent also submitted that the minor was of tender age and had remained in her continuous care since birth and therefore, the welfare principle supported her claim to custody. It was argued that there



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was no pleading in the main petition alleging that the respondent was unfit to act as guardian and that the only grievance raised by the petitioner was that he was being denied access to the child. On these premises, the respondent contended that even if the petitioner's claim of adoption was taken at its highest, his claim could not, in the circumstances pleaded, override the statutory position of the biological mother. She accordingly sought rejection of the petition under Order VII Rule 11(d) as being barred by law.

11. The petitioner resisted the application by contending that the respondent was seeking to have disputed questions of fact decided at the threshold. It was specifically pleaded that the parties had mutually agreed before their marriage that the petitioner would assume the role of father, that Dattaka Sweekara was performed during the marriage ceremony and that the temple records and photographs supported the said assertion. The petitioner further relied upon the biological father's



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consent, the modified consent terms executed before the Bandra Family Court and the subsequent proceedings before the Child Welfare Committee to contend that the adoption was not a mere afterthought. He asserted that the child had lived with him after the marriage and that he had discharged the responsibilities of a father, thereby creating a genuine parental bond with the minor.

12. The petitioner, therefore, contended that the question whether the Dattaka Sweekara constituted a valid adoption, whether the petitioner was entitled to claim the status of an adoptive father and whether custody or access to him would advance the welfare of the minor were all matters requiring evidence and could not be determined in an application under Order VII Rule 11 of CPC. It was further urged that the petition disclosed a clear cause of action arising from the respondent's removal of the child from the matrimonial home and subsequent denial of access. The petitioner relied upon the principle that, at the stage of considering an application



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under Order VII Rule 11, the averments in the petition have to be taken at their face value and that the Court ought not to conduct a mini-trial. He, therefore, sought dismissal of I.A.No.5 and contended that the respondent was attempting to prevent a proper enquiry into the welfare of the minor.

13. By order dated 24.11.2025, the Family Court considered I.A. Nos.5 and 6. The Court noticed that Sections 7 and 17 constitute the general provisions relating to appointment or declaration of a guardian, while Section 19 operates as a statutory restriction upon such appointment in the circumstances enumerated therein. The Court proceeded on the basis that the respondent was the biological mother of the minor and was admittedly alive. It further observed that the petition did not contain any specific allegation that the respondent was unfit to take care of the minor and that the principal allegation against her was that she had denied access to the petitioner. The Court also referred to Section 6 of the



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Hindu Minority and Guardianship Act and observed that the statutory scheme recognises the biological father and mother as natural guardians, while a step-father is excluded from that category.

14. The Family Court ultimately held that even assuming, for the sake of argument, that the petitioner was an adoptive father and not merely a step-father, his claim could not, *prima facie*, override the rights of the respondent as the natural mother. On that reasoning, the Court concluded that the petition was hit by Section 19(b) of the G&W Act and was liable to be rejected under Order VII Rule 11(d) CPC. Consequently, I.A.No.5 filed by the respondent was allowed and the main petition was rejected. Since the main proceedings themselves stood rejected, the petitioner's application under Section 12 of the G&W Act was held not to survive for consideration and was accordingly disposed of.



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15. Aggrieved by the said order dated 24.11.2025, the petitioner has preferred the present Miscellaneous First Appeal under Section 47(a) of the Guardians and Wards Act, 1890. The petitioner contends that the Family Court rejected the guardianship and custody proceedings solely on the basis of Section 19(b), without undertaking any enquiry into the welfare of the minor and without properly considering the petitioner's specific case that he was the adoptive father. The petitioner relies upon the Dattaka Sweekara ceremony dated 22.08.2024, the biological father's consent affidavit dated 29.07.2024, the modified consent terms dated 13.08.2024, the Bandra Family Court order dated 02.09.2024 and the Child Welfare Committee's recommendation dated 05.04.2025. It is also asserted that the respondent herself admitted the Dattaka Sweekara in her sworn objections filed in the very proceedings.

16. The petitioner further contends that the impugned order failed to consider the material relating to



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the relationship between the petitioner and the minor and proceeded to reject the petition before any welfare enquiry could take place. The appeal also refers to the subsequent proceedings before this Court in W.P. No.3798/2026 (GM-FC) which was disposed of on 10.03.2026 granting liberty to challenge the order dated 24.11.2025 by filing an appropriate proceeding. The petitioner states that, thereafter, the respondent filed an application under Order II Rule 2 CPC in G&WC No.499/2025 seeking dismissal of the subsequent petition on the strength of the impugned order, which, according to the petitioner, made it necessary to challenge the order by way of the present appeal.

17. The principal relief sought in the present appeal is, therefore, to set aside the order dated 24.11.2025 and to pass appropriate orders keeping in view the paramount welfare of the minor child.



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18. We have heard the arguments of Sri.Amardeep, learned counsel appearing for the petitioner and Sri.Azhar Meer, learned counsel appearing for the respondent and perused the material on record.

19. Having heard the learned counsel for the appellant and the learned counsel for the respondent and having perused the pleadings, the applications filed by both parties and the order passed by the learned Family Court, the question that arises for our consideration is,

"Whether the order dated 24.11.2025 rejecting the petition under Order VII Rule 11 of the CPC calls for our interference?"

20. On a careful consideration of the matter, we are of the view that it does not, on the following grounds:

The petitioner's case is that he is the adoptive father of the minor and that a Dattaka Sweekara ceremony was performed at the time of his marriage with the respondent. He has relied upon the documents relating to the said ceremony and the subsequent proceedings before



the Child Welfare Committee to contend that the question of his status as an adoptive father requires adjudication. However, the fact remains that the respondent is the biological mother of the minor and is admittedly alive. The petitioner has not pleaded that the respondent is unfit to act as the guardian of the minor. His principal grievance is that the respondent has denied him access to the child. In these circumstances, the Family Court was justified in examining the bar contained in Section 19(b) of the G&W Act before proceeding to consider the question of custody or welfare of the minor.

21. It is no doubt true that the welfare of the minor is of paramount importance in proceedings relating to custody and guardianship. However, the consideration of welfare does not mean that the statutory provisions governing the maintainability of the proceedings can completely be ignored. Sections 7 and 17 of the G&W Act have to be read along with Section 19. Where the father or mother of the minor is living and is not shown to be



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unfit, the Court is circumscribed by the statutory restriction contained in Section 19(b). In the present case, there is no pleading or material placed by the petitioner to show that the respondent, who is the biological mother, is unfit to have the guardianship of the child. Therefore, the mere assertion that the petitioner has a close relationship with the minor or that he had undertaken certain responsibilities during the period when the parties lived together cannot, by itself, overcome the statutory bar.

22. The contention that the alleged Dattaka Sweekara itself takes the petitioner outside the scope of Section 19(b) also cannot be accepted at this stage. The respondent disputes the legal status claimed by the petitioner and the petitioner's assertion that he is the adoptive father necessarily involves consideration of the validity and legal effect of the alleged adoption. The documents relied upon by the petitioner may be relevant for determination of that issue in an appropriate proceeding; however, their mere production does not



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establish, as a matter of law, that the petitioner has acquired the status of the natural guardian so as to maintain the present petition. The Family Court was, therefore, justified in considering the petition as it was framed and in examining whether it was barred by law.

23. We are also not persuaded by the submission that the Family Court was required to conduct a detailed enquiry into the welfare of the child before deciding the application under Order VII Rule 11 CPC. The question of welfare would arise for consideration once the Court finds that the proceedings are maintainable and that there are competing claims requiring adjudication. In the present case, the Family Court found that the petition itself was barred by Section 19(b) of the G&W Act. The Court was, therefore, not required to conduct a full-fledged enquiry into the comparative welfare claims of the parties. The fact that the impugned order does not contain a detailed welfare assessment, by itself, cannot be a ground to set



aside the order when the proceedings were found to be legally not maintainable.

24. The petitioner's reliance on the alleged admission of the respondent regarding the Dattaka Sweekara also does not alter the position. Even if it is accepted that a ceremony was performed, the legal validity and consequence of that ceremony cannot be determined merely on the basis of such an assertion. The petitioner cannot claim a right to guardianship solely on the strength of the ceremony without establishing that the adoption was legally valid and that such adoption confers upon him the status which he claims. These are the matters which cannot be presumed in his favour merely for the purpose of defeating the statutory bar under Section 19(b) of the G&W Act.

25. Once the main petition was found to be barred and was rejected under Order VII Rule 11(d) CPC, the application filed by the petitioner under Section 12 of the



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G&W Act seeking interim visitation could not survive independently in the said proceedings. The Family Court was, therefore, justified in disposing of the said application accordingly. It is also relevant that during the pendency of the proceedings, the Family Court had already taken steps to facilitate interaction between the appellant and the minor during mediation and had permitted video calls twice a week.

26. For the aforesaid reasons, we find no error in the view taken by the learned Family Court. The petitioner has failed to demonstrate that the order dated 24.11.2025 suffers from any illegality or perversity warranting interference in appeal. The statutory bar under Section 19(b) cannot be brushed aside merely because the petitioner asserts a claim of adoption, particularly when such status is itself disputed and there is no allegation that the biological mother is unfit to act as guardian.

Accordingly, the appeal is dismissed.



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The order dated 24.11.2025 passed by the II Additional Principal Judge, Family Court, Bengaluru, in G&WC No.301/2025 is affirmed. Consequently, the application filed by the petitioner under Section 12 of the Guardians and Wards Act, does not survive for consideration. It is, however, clarified that this order is confined to the maintainability of the proceedings as framed and shall not be understood as expressing any final opinion on the validity or otherwise of the alleged adoption, should that question arise for consideration before a competent forum.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(H.SHANTHI BHUSHAN)
JUDGE**

KNM
List No.: 1 Sl No.: 13