

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.06.2019	Delivered on 11.06.2019
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CORAM

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

O.P.No.126 of 2019
Appl. No.1357 of 2019

Khaja Moideen Petitioner

Vs.

Jasmin ... Respondent

Prayer: Original Petition filed under Sections 7, 8, 12, 25 of the Guardian and Wards Act, 1890 read with Order XXI Rule 2 and 3 of the Original Side Rules, praying that to appoint the petitioner herein as the Guardian of the person of my minor children Master Muhammed Jasmal and Aisha Banu aged about 11 years and 8 years respectively and to have custody of the minors.

For Petitioner : Mr.K.Mukund Rao

For Respondent : No appearance

ORDER

The petitioner seeks guardianship and custody of the minor children Muhammed Jasmal and Aisha Banu.

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner is the father of the minor children. The petitioner got married to the respondent on

21.10.2007 and the minor children Muhammed Jasmal and Aisha Banu were born on 27.10.2008 and 02.02.2011 respectively out of the said wedlock.

3. According to the petitioner, the respondent left the matrimonial house along with children and she has not cared to come back. Despite the fact that the petitioner chose to setup a residence at Kerala in tune with the wishes of the respondent, the respondent continued to behave in a manner prejudicial to him and the minor children. The petitioner has also averred that the respondent has got illicit intimacy with others and she does not take care of the children.

4. The respondent was served notice in this Original Petition through Court as well as privately. Despite such service, she has not chosen to appear. She was set *ex-parte* and the matter was posted before the learned Master for recording evidence.

5. The petitioner was examined as P.W.1. He has filed proof affidavit reaffirming the averments made in the petition. He also produced the Marriage Certificate and the Birth Certificates of the minor children as Ex.P1, P5 and P6.

There is no contra evidence so as to disbelieve the evidence of the petitioner vide his proof affidavit.

6. In view of the said evidence, I am of the opinion that interest of the minor children would be preserved only if the petitioner is appointed as guardian of the minor children and the custody of the minor children handed over to the petitioner. Despite serious allegations made in the petition, the respondent has not chosen to appear and contest. Hence this Court is left with no other alternative than to appoint the petitioner as guardian of the minor children and also direct the custody of the minor children to be handed over to the petitioner.

7. In fine, the petition is allowed. The petitioner is appointed as guardian of the minor children Muhammed Jasmal and Aisha Banu. There will be a direction to the respondent to handover the custody of the children to the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

List of Witnesses examined on the side of the Petitioner:

PW1 - Mr.Khaja Moideen

List of Witnesses examined on the side of the Respondent: Nil

List of Exhibits marked on the side of the Petitioner:

Sl. No.	Exhibits	Description of Documents
1	Ex.P1	The Photocopy of the Marriage Certificate dated 21.10.2007
2	Ex.P2	The Photocopy of the Marriage Invitation dated 21.10.2007
3	Ex.P3	The Photocopy of the Reception Invitation dated 28.10.2007
4	Ex.P4	The Photocopies of Marriage Photos with the respondent
5	Ex.P5	The Birth Certificate of Son Muhammed Jasmal
6	Ex.P6	The Birth Certificate of daughter Aisha Banu
7	Ex.P7	The photocopy of the Family Card
8	Ex.P8	The Photocopy of Aadhaar Card of the petitioner
9	Ex.P9	The Photocopy of Aadhaar card of the Respondent

List of Exhibits marked on the side of the Respondents: Nil

Sd./-R.S.M.J
11.06.2019

//Certified to be true copy//

Dated at Madras this the day of 2019.

JJ 27/06/2019

COURT OFFICER(O.S.)

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