

O.P.No.318 of 2015 &
A.No.3096 of 2019

K.KALYANASUNDARAM, J.

This Petition has been filed under Sections 3, 7 to 10 & 25 of the Guardians and Wards Act, 1890 read with Order XXI, Rule 2 and 3 of Original Side Rules, seeking appointment of the petitioner as a Legal Guardian of the person of the minor-Havisha and grant custody of minor-Havisha to the petitioner and for costs.

2. The case of the petitioner is that the petitioner and the respondent had become friends through the Social Network viz., Face Book in the year 2009 and both fell in love with each other. Thereafter, the marriage between the petitioner and respondent was solemnized on 26.10.2012 at Ettampadai Veedu Murugan Temple, Chennai according to Hindu Rights and Customs and the marriage was registered in the Sub Registrar Office, Triplicane, on 31.10.2012.

3. It is averred in the petition that after the marriage, the respondent's

behaviour was very suspicious and she used to talk several hours in her cellphone and the petitioner did not question the respondent about the same. Despite the above said fact, the respondent had suddenly left for United Kingdom for the reasons best known to her on 08.12.2012 and thereafter, the petitioner came to know that the respondent was already married to one Vijayakumar Thangaraja and out of the earlier marriage, the respondent was having two daughters, viz., Shruthi, born on 28.02.2008 and Varshini born on 13.11.2003. When the petitioner questioned the above said fact, it was informed that her daughter Shruthi is her sister's child and another child Varshini is her cousin's daughter. After reaching the United Kingdom, the respondent sent an email dated 24.12.2012, stating that she had been forcibly taken away by unknown persons and the petitioner and his family members were also under threat at the hands of the those unknown persons.

4. It is further averred in the petition that believing the explanations offered by the respondent and the fact that the respondent had conceived, the petitioner had permitted her into the matrimonial home, when she had returned to India on 25.04.2013. After the birth of the child Havisha on 05.08.2013, the petitioner had received materials against the respondent as

well as about the two children of the respondent and the details about earlier marriage with Vijayakumar Thangaraja. When all the documentary proofs were shown to the respondent, the respondent accepted the earlier marriage and also agreed to dissolve the marriage. Accordingly, a mutual consent Divorce Petition was filed before the I Additional Family Court at Chennai in H.M.O.P.No.4127 of 2013, on 07.11.2013 and after filing the petition, the respondent left to United Kingdom and refused to give her consent. However, after returning to India, the respondent had lodged a complaint with the Police Authorities on 05.01.2014 with ulterior motives, as if the petitioner and his parents have ill treated her and they also refused to hand over the custody of the child Havisha to her. Thereafter, the Police enquired and satisfied about the documentary materials that were shown to them to prove the fraud and cheating committed by the respondent against the petitioner. However, in the meantime, the respondent has moved this Court by filing an H.C.O.P. No.464 of 2014 against the petitioner for the custody of the child and this Court by an order dated 13.02.2014 had granted interim custody to the respondent with visitation rights to the petitioner.

5. According to the petitioner, though the respondent was married to

one Thangaraja much earlier to the marriage with the petitioner and having two children at United Kingdom, the respondent suppressed material fact about the earlier marriage and this has caused severe mental cruelty to the petitioner. Further, the respondent had declared herself as a spinster in the Form, that has been submitted for marriage and had given a false statement before the Registrar of marriages to the register the marriage. Alleging that the petitioner is not a proper person to take care of Minor Havisha, the petitioner has filed the present Original Petition, seeking a direction to appoint her as the guardian of Minor Havisha and grant custody of minor Havisha to the petitioner.

6. The petitioner himself was examined as P.W.1 and filed proof affidavit, reiterating the averments contained in the petition and marked Exs.P1 to P24

Exs	Documents	Dated
P1	Original Marriage Invitation Card with the respondent	-
P2	Photocopy of receipt given by the concerned temple in respect of his marriage with the respondent	28.10.2012
P3	Photocopy of his Marriage Extract with the respondent	31.10.2012
P4	Marriage affidavit with the respondent	07.12.2012

Exs	Documents	Dated
P5	Photocopy of Parental Responsibility Agreement given by the respondent	07.05.2013
P6	Email copy of DNA Test report in respect of second child Vaishni Tharsini	-
P7	Email copy of the DNA Test report in respect of the 1st child Shruthi Tharsini	-
P8	Photocopy of his Police complaint at W2, Anna Salai Police Station	31.10.2013
P9	Photocopy of his Police complaint at W2, All Womens Police Station, Anna Salai,	01.11.2013
P10	Photocopy of his complaint at W2, All Womens Police Station, Anna Salai, withdrawn by him.	-
P11	Photocopy of police complaint lodged by the respondent at Assistant Commissioner of Police, Triplicane	05.01.2014
P12	Photocopy of his Police Complaint at W2, Anna Salai Police Station	-
P13	Email sent by the petitioner to British High Commission	28.02.2014
P14	Email reply sent by the petitioner to the respondent	03.03.2014
P15	Email sent by the petitioner to the British High Commission	25.03.2014
P16	Statement of Mr.Vijayakumar addressed to the petitioner by way of email	-
P17	(Series 2 Nos.) are the xerox copies of photos of the respondent with her Ex-husband along with CD	-
P18	Certified copy of petition in H.M.O.P.No.4127 of 2013 before the Family Court, Chennai filed by the petitioner and respondent jointly	-
P19	Certified copy of dismissal order in O.P.No.4127 of 2013 passed by the I Additional Family Court	24.06.2014
P20	Certified copy of petition to declare the marriage as null	-

Exs	Documents	Dated
	and void of the petitioner and respondent in O.P.No.3197 of 2014 filed before Family Court, Chennai	
P21	Certified copy of the order in H.C.P.No.464 of 2014 passed by the High Court	24.09.2014
P22	Certified copy of affidavit filed by the respondent in H.C.P.No.464 of 2014	-
P23	Certified copy of Habeas Corpus Petition in H.C.P.No.464 of 2014 filed by the respondent	-
P24	Certified copy of the counter filed by the petitioner in H.C.P.No.464 of 2014	-

7. The respondent was served notice in the Original Petition and application and paper publication was also effected. Despite such service, she has not chosen to appear. She was set *ex-parte* on 26.08.2019 and the matter was posted before the learned Master for recording evidence.

8. The petitioner was examined as P.W.1. He has filed proof affidavit reaffirming the averments made in the petition. There is no contra evidence so as to disbelieve the evidence of the petitioner vide his proof affidavit.

9. In view of the said evidence, I am of the opinion that interest of the minor child would be preserved only if the petitioner is appointed as guardian of the minor child and the custody of the minor child 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 child-Havisha and also direct the custody of the minor child to be handed over to the petitioner.

10. In fine, the petition is allowed. The petitioner is appointed as guardian of the minor child-Havisha. There will be a direction to the respondent to handover the custody of the minor child to the petitioner. The petitioner shall execute a Guardian Bond for a sum of Rs.25,000/- in favour of Assistant Registrar O.S.(II), High Court, Madras. No costs. Consequently, the connected miscellaneous petition is closed.

03.10.2019

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