

O.P No.752 of 2017

K.KALYANASUNDARAM., J

The paternal grandparents of the minor children U.Anusha, UB.Riya and U.Haashini have filed this Original Petition, seeking to appoint and declare them as lawful guardian of the persons and property of the minor children.

2. According to the petitioners, the respondent was married to their son Mr.Udaya Balan on 30.06.2004. During the lawful wedlock, three girl children were born to them on 09.05.2005, 01.10.2008 & 12.04.2011. It is stated that the respondent along with her husband was living together at Ekkattuthangal, Guindy, Chennai. The petitioners' son owned a manufacturing unit of Electrical and Mechanical Company and was having office at Thirumudivakkam.

3. The petitioners would further state that their son had frequent travelling for the business purpose. Taking advantage of the same, the respondent developed extra marital relationship with one Prabakaran, a call taxi driver. It is alleged that on 05.06.2017, the petitioners' son was

murdered in his house and a criminal case was registered in Crime No.1942 of 2017 by the Guindy Police under Section 302 of IPC. The investigation got transferred to City Crime Branch, Chennai and during the investigation, it was found that the respondent led an adulterous life with the said Prabakaran and hatched a conspiracy to murder their son, which was executed on 05.06.2017.

4. It is further alleged that from the initial days of marriage, the respondent used to quarrel with the petitioners' son even for trivial issues. Though the minor children of the petitioners were aware of the adulterous activities of the respondent with the said Prabakaran, they did not reveal due to the constant threat exerted by the respondent. The Police, during the investigation, arrested the respondent and her accomplice Prabakaran and they were remanded to Puzhal Jail. Henceforth, the minor children are under the care and custody of the petitioners. The first child Anusha is studying in a reputed residential school at Yercaud, while the other two children are residing with the petitioners and they are pursuing their studies at Chettinad Vidyashram School, Raja Annamalaipuram, Chennai.

5. It is further stated that due to gruesome murder of the minors father with the involvement of their mother, the children have not recovered from the shock and trauma and are affected psychologically as they were aware of the adulterous acts of the respondent from the beginning. The minor children are presently under the safe custody of the petitioners and they have sufficient means and wherewithal to take care of the necessities of the children and to impart them of best education and other needs. The respondent stands disqualified by virtue of Section 25 of Hindu Succession Act and in the best interest and welfare of the minors, it is not suitable for the respondent to have custody or visitation right of the minor children and hence, the petitioners have to be appointed as lawful guardian of the persons and property of the minor children.

6. In the detailed counter affidavit filed by the respondent, the marriage of the respondent with the petitioners' son on 30.06.2004 and the three children born to them in the year 2005, 2008 & 2011 are not disputed. It is the case of the respondent that after birth of third child, her husband had become enmical towards her and started to ill-treat the respondent. The respondent underwent untold misery and she was treated as a servant in the house.

7. It is further stated that her husband was having an adulterous life with one Ms.Jothi and after considering the plight of the respondent, the first petitioner suggested the respondent to attend meditation classes, so as to recuperate herself to lead a normal life. The respondent would further state that her husband was having acquaintance with Mr.Prabakaran, who is a cab driver, who used to come for operating car or as a hire driver on many occasions. The said Prabakaran is also having nexus with one Vasanth, who is the nephew of the second petitioner. According to the respondent, her husband was murdered by the said Prabakaran at the instigation of the said Vasanth, however, at the influence of the first petitioner, the respondent was implicated in the criminal case as co-accused and she was arrested by the Police and this was done to disqualify the respondent from claiming guardianship of her daughters.

8. The respondent further stated that she being the mother of the minor children in the absence of their father, is a natural guardian and on the other hand, the petitioners are not fit to take care of the children and they have put the children into a hostel, which itself shows that the petitioners are not extended conducive atmosphere to the minor children, when especially they are girl children. It is further stated that the prime

accused Prabakaran after coming out of bail was murdered and there is no possibility that the respondent marrying the said Prabakaran and eliminate the minor children.

9. A rejoinder affidavit has been filed by the petitioners denying the allegations made in the counter affidavit.

10. Based on the pleadings, the following issues were framed:-

"(i) Whether the petitioners are competent to be appointed as guardians of the person and property of the minors U.Anusha, U.B.Riya and U.Haasini?

(ii) Whether the respondent is disqualified from being the guardian of the minor children?

(iii) Whether the welfare of the minor children will be served by appointing the petitioners as their guardians?

(iv) To what relief the parties are entitled?"

11. To fortify the case of the petitioners, the first petitioner gave evidence as P.W.1 and filed proof affidavit, reiterating the averments contained in the petition and marked Exs.P1 to P8.

12. The counsel for the respondent cross-examined P.W.1 till 04.07.2019 and when the case was posted on 26.08.2019, it was represented by the learned counsel that the respondent was convicted and further cross examination of P.W.1 was closed. On the side of the respondent, no oral or documentary evidence was let in.

13. Heard the learned counsels and perused the materials available on record.

14. In the matter on hand, it is not disputed that the respondent was married to the son of the petitioners on 30.06.2004 and three minor children viz., V.Anusha, UB.Riya and U.Haasini were born to them on 09.05.2005, 01.10.2008 & 12.04.2011 respectively. It is also not equally disputed that the petitioners' son Udaya Balan was murdered on 05.06.2017 and in pursuance thereof a criminal case was registered by the Guindy Police in Crime No.1942 of 2007 under Section 302 of I.P.C. Admittedly, the respondent herein was made as one of the accused in the criminal case and she was arrested and remanded to judicial custody.

15. P.W.1 has narrated the entire facts in his chief examination and during the course of cross-examination, nothing was elicited to discredit his evidence. Further, no contra evidence was produced in support of the case of the respondent.

16. A perusal of the evidence of P.W.1 and exhibits would reveal that the respondent had adulterous life with the first accused-Prabakaran and in pursuance of the conspiracy hatched by the respondent with the said Prabakaran, the petitioners' son was murdered on 05.06.2017. Even though it is alleged in the counter that the respondent's husband was having illicit relationship with one Jothi and her husband was murdered at the instigation of the second petitioner's cousin-Vasanth, those allegations were not substantiated during the cross-examination of P.W.1 and no other materials have been brought on record.

17. It is to be noted that the evidence of P.W.1 was closed on 26.08.2019 and on that day, it was represented by the learned counsel for the respondent that the respondent was convicted by the criminal Court and a copy of the judgment in S.C.No.141 of 2018 was produced during the course of argument by the learned counsel for the petitioners. From the

perusal of the judgment, it is seen that Prabakran was arrayed as A1 and the respondent was the second accused and the charges were framed against them under Section 120 B, 302 read with 109 of I.P.C. and the criminal Court found that all the charges have been proved beyond all reasonable doubt by the judgment dated 08.08.2019. It is further seen that Anusha and Riya gave evidence as P.W.4 and P.W.5 and they have cogently narrated the incident connecting the accused 1 and 2 and on the basis of their evidence, the respondent was convicted.

18. It is pertinent to note that on the date of filing of this petition, it was the stage of registration of a criminal case of murder and at the end of the trial in this case, the respondent was convicted and sentenced to life imprisonment.

19. Section 25 of Hindu Succession Act, 1956 is extracted hereunder for ready reference:-

"A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder."

20. A plain reading of the above Section would show that a person involved in the case of murder is dis-entitled from inheriting from the property of the person murdered. In the instant case, from the perusal of the judgment of the learned Sessions Judge in S.C.No.141 of 2018, it is seen that not only the respondent is involved in the criminal case of murder of her husband, but her complicity has been proved. Therefore, the respondent is disqualified from inheriting the property of her husband.

21. The Hon'ble Supreme Court in the case of **Shaleen Kabra v. Shiwani Kabra** [(2012) 5 SCC 355] has observed as follows:-

"17. We do not believe that the children would remain in company of servants as alleged by the Learned Counsel appearing for the Respondent-mother. Father of the Appellant i.e. the grandfather of the children would also be in a position to look after the children and infuse good cultural values into them. Normally, grandparents can spare more time with their grand children and especially company of well educated grandparents would not only help the children in their studies but would also help them to imbibe cultural and moral values and good manners."

22. Keeping in view the observations made in the above decision and also considering the facts of this case, this Court is of the opinion that it would be appropriate to appoint the petitioners/grandparents as guardian of the minor children and their property and the mother of the minors is unfit to be a guardian of the minor children. In fine, the O.P. is ordered as prayed for.

r n s

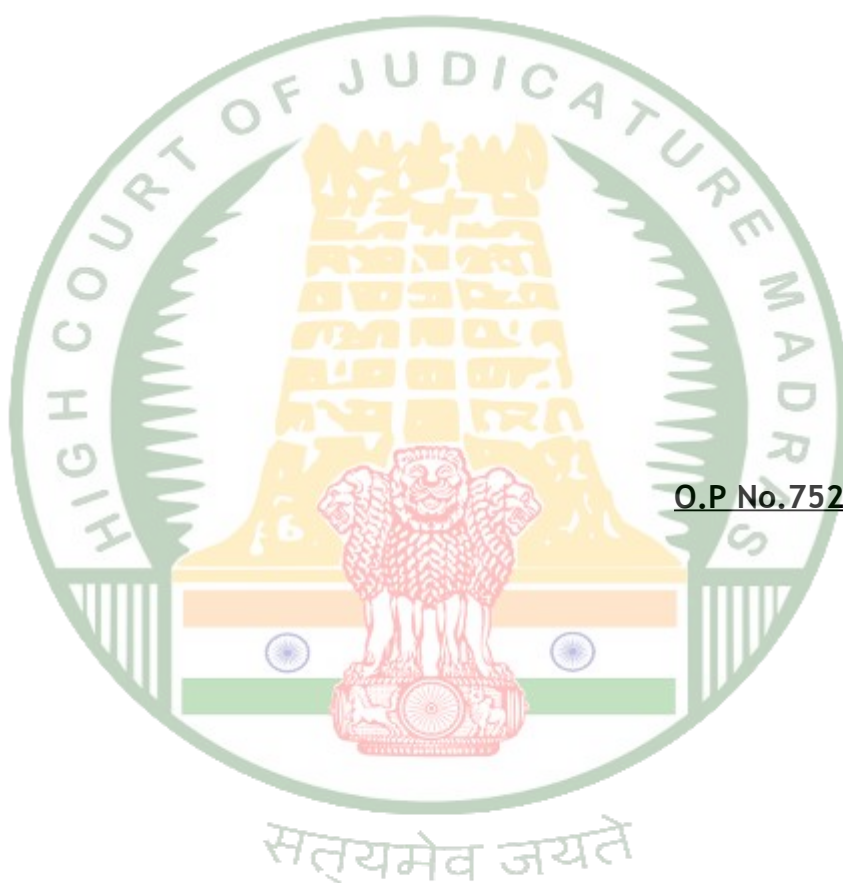
18.11.2019



WEB COPY

K.KALYANASUNDARAM., J

r n s



O.P No.752 of 2017

WEB COPY

18.11.2019