

O.P.No.1089 of 2019

R. PONGIAPPAN, J.

This Petition has been filed under Sections 3, 7 to 10 and 25 of the Guardian and Wards Act 1890 read with Order XXI Rule 2 and 3 of Original Rules to appoint and declare the petitioner as guardian of the minor child name Sowmithran born on 10.03.2011 and also permanent custody of the minor child name Sowmithran.

2. The case of the petitioner is that the Petitioner and Respondent were married as per Hindu rights and customs on 27.01.2010. Out of their wedlock one male child namely Sowmithran was born on 10.03.2011. The Child is in the custody of the petitioner. Due to severe cruelties to the Petitioner, the Petitioner and Respondent lived separately since 02.01.2014. The Petitioner and Respondent jointly filed O.P.No.1552 of 2015 before the Family Court, Chennai for dissolution of marriage by a decree of divorce by mutual consent. The same was decreed on 24.03.2016. In that case the Respondent had agreed to pay Rs.5,00,000/- to the Petitioner for the

maintenance of the minor child and also agreed and accepted that the minor child would be under the custody and guardianship of the petitioner. It was also agreed for the visitation rights of the Respondent on every last Sunday of the month. The Respondent has also no objection for the custody and guardianship of the child with the Petitioner.

3. During November 2017 the Respondent has remarried one Mrs. Padmavathi and has another male child through her. The minor child Sowmithran has been well taken care of by the Petitioner, presently studying 3rd standard and his welfare is well taken by the care of the Petitioner. Even after the divorce, the Respondent has been continuously harassing the petitioner through emails and phone calls. He had also come to the place where the petitioner was working in drunken state. Hence, the Petitioner made a complaint to the Police Station on 07.03.2019.

4. Since the Petitioner is a Senior Scientist at the Institute for Ocean Management, Anna University and got an opportunity to relocate to Sweden for research work, the Sweden Embassy wanted consent letter from the

Respondent as he had visitation rights as per the terms agreed in O.P.No.1552 of 2015 on the file of the I Additional Family Court. But the Respondent not only refused to give consent but also took it as an opportunity to further harass her. The Swedish Migration Agency has sent an email dated 21.12.2009 to the Petitioner stating that the Petitioner would have to send a document to prove that the respondent no longer has visitation rights or that he consents that the minor son travels to Sweden with the Petitioner not later than 20.01.2020 and if not they will have to reject the minor child's application and she would have to make a new application for the minor child.

5. In the above circumstances, the Petitioner is constrained to approach this Court to declare the Guardianship of Minor Child Sowmithran and to grant the Petitioner absolute custody of the child to enable her to take the minor child to Sweden where she is offered to do research work with all facilities. No person has been appointed as Guardian of the person or property of the minor child and no application has been made at any time to this Hon'ble Court or to any other court with respect to the guardianship of

the minor child except the terms and conditions accepted by the Petitioner and Respondent in O.P.No.1552 of 2015 before the Family Court. Hence the petitioner prays this Court to declare her as the Guardian of the minor child namely Sowmithran and also seeks permanent custody of the minor child.

6. On the side of the petitioner, the petitioner examined herself as P.W.1 and marked Ex.P.1 to Ex.P.16.

7. P.W.1 in his evidence had narrated the averments made in the petition stating that the petitioner has filed this petition for appointing him as a guardian to the minor child Sowmithran and permanent custody of the minor child. Ex.P.1 is the computer generated birth certificate of minor child S.Sowmithran, who was born on 10.03.2011. Ex.P.2 is the original order dated 24.03.2017 passed in O.P.No.1552 of 2015 by the 1st Additional Family Court, Chennai. Ex.P.12 is the e-mail communication dated 12.12.2019 sent by Swedish Migration Agency to the Petitioner. Ex.P.12 is the e-mail communication dated 13.12.2019 sent by the Petitioner to the Swedish Migration Agency. Ex.P.14 is the e-mail communication dated

21.12.2019 sent by the Swedish Migration Agency to the Petitioner. Ex.P.15 is the photocopy of the School identity Card of the minor child and Ex.P.16 is the photocopy of the Aadhar Card of the minor child S.Sowmithran.

8. The allegations in the petition and the evidence of P.W.1 remained unchallenged and in fact, the same proves the fact that the minor child was all along in care and custody of the Petitioner and good education has been given and is in comfortable position. Though, the father, being the natural guardian of the minor, neither maintained the child nor taken care of the child at any point of time and he got remarried another lady and got male child through her. The petitioner now seeking declaration as guardian of minor child and to grant absolute custody of the child to enable her to take the minor child to Sweden where she is offered to do research work with all facilities. The petitioner being the mother and natural guardian of the minor child, she is taking care of the minor child from its birth; for the purpose of taking the minor child along with her to Sweden, the Swedish Migration Agency require consent of the father, who has got visitation right of the

minor child. But the Respondent/father though served notice, has not appeared before this Court either in person or through counsel. Considering the averments made in the Petition as well as in the evidence of P.W.1 this Court is of the view that merely because the respondent being the father and natural guardian, the same will not deter this Court declaring the Petitioner/mother as the guardian of the Minor Child S. Sowmithran and grant permanent custody to the petitioner.

9. In view of the above facts, this petition is ordered, by appointing the petitioner as the Guardian of the person of the minor child S.Sowmithran and also granting Permanent Custody of the minor child S. Sowmithran 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.

ggs

02.02.2021

WEB COPY

R. PONGIAPPAN, J.

ggs



O.P.No.1089 of 2019

WEB COPY

02.02.2021