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P.VELMURUGAN, J.

This original petition has been filed under Sections 3, 7, 10 and 25 of the Guardian and Wards Act and VII of 1890 and Order 21 Rule 2 and 3 of Original Side Rules of this Court, seeking to appoint the paternal grandfather Mohan, the first petitioner herein as the legal guardian of the minor child Kevin Maxwell, who was born on 27.02.2011, to direct the respondent to handover the custody of minor child and to grant permanent custody of minor child to the first petitioner.

2.Initially, the original petition was filed by the paternal grandfather of the minor child/the first petitioner herein and he was examined himself as P.W.1. During the pendency of the petition, the first petitioner died. By an order dated 19.07.2018 in A.No.3208 of 2018, the legal representatives of the deceased were brought on record as petitioners 2 to 4, who are the paternal grandmother, paternal uncle and paternal aunt of the minor child. The respondent is the maternal grandmother of the minor.



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3.Trial commenced and evidences were adduced on the side of the petitioners. The petitioners 1, 2 and 3, who examined themselves as P.W.1, P.W.2 and P.W.3, reiterated the averments made in the petition and filed the following documents viz., Exs.P1 to P13 :

Ex.P1 is the office copy of the complaint dated Nil given by her daughter-in-law to the Sub Inspector of Police, Kunrathur, Chennai 600 069.

Ex.P2 is the computer generated birth certificate of her son's son R.Kevin Maxwell, her grandson who was born on 27.02.2011.

Ex.P3 is the photocopy of the Burial Ground Report dated 24.01.2012 in respect of her son Rajasekar, who died on 23.01.2012.

Ex.P4 is the photocopy of the Burial Ground Report dated 24.01.2012 in respect of her daughter-in-law Suganthi, who died on 23.01.2012.

Ex.P5 is the photocopy of the copy of CSR in No.43 of 2012 dated 08.02.2012.

Ex.P6 is the office copy of the undertaking given by G.Malliga, the respondent herein to the Sub Inspector of Police, Kunrathur, Chennai -69

Ex.P7 is the original Marriage Register Book dated 19.01.2010 for the marriage took place between her son Rajasekar and Sunganthi.



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Ex.P8 is the original certified copy of the common judgment dated 13.04.2017 passed in C.M.A.Nos.2193 to 2195 of 2016, by the Hon'ble High Court, Madras.

Ex.P9 is the original certified copy of the Decree dated 13.04.2017 granted in C.M.A.No.2195 of 2016.

Ex.P10 is the photocopy of P.W.3's Aadhaar card bearing No.7138 6676 8961.

Ex.P11 is the photocopy of Aadhaar card bearing No.5672 1841 6391 of P.W.3's wife D.Jayasudha.

Ex.P12 is the photocopy of the Aadhaar card bearing No.4157 3122 6910 of P.W.3's elder daughter D.Serlin Priya,

Ex.P13 is the photocopy of the Aadhaar card bearing No.2019 3151 1161 of of P.W.3's younger daughter D.Shiny Priya,

4.On the side of the respondent, the respondent examined herself as R.W.1 and one V.Devika was examined as R.W.2. The following 9 documents viz., Exs.R1 to R9 were marked on behalf of the respondent :

Ex.R1 is the photocopy of the LIC policy bond bearing policy No.707258288 paid by her in the name of Kevin Maxwell.

Ex.R2 is the photocopy of the fixed deposit receipt No.F 225216 of Tamilnad Mercantile Bank Limited which was paid by her in favour of minor Kevin Maxwell.



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Ex.R3 is the photocopy of the Sale Deed dated 24.09.2009 in favour of R.W.1

Ex.R4 (series 2 Nos) are the letters given by her employers

Ex.R5 is the photocopy of the certificate dated 03.07.1997 issued by Thakkar Bapa Vidyalaya for her tailoring course.

Ex.R6 (series 22 Nos) are the original school receipts paid by her for her grandson Kevin Maxwell.

Ex.R7 is the photocopy of the fixed deposit bearing receipt C.No.0038108 in Tamilnadu Mercantile Bank Limited for the amount of Rs.9,505/- in the name of the minor child Kevin Maxwell.

Ex.R8 (series 2 Nos) are the original letters given by Mrs.V.Devika and S.Saraswathi stating that she is doing tailoring work and she is earning a sum of Rs.8,000/- to 10,000/- by doing so.

Ex.R9 is the photocopy of the Aadhaar card of V.Devika bearing No.6035 3115 6723.

5.The learned counsel for the petitioners would submit that on 24.01.2012, the first petitioner's son and daughter-in-law, who are the parents of the minor child, while travelling along with their child in a motor bike, met with an accident and succumbed to injuries. The minor



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child alone survived with injuries and admitted in the hospital. The respondent being the maternal grandmother requested that she will take care of the child in the hospital and this request was accepted by the petitioners' family. After discharge of the child from the hospital, again the respondent made a request to keep the child with her till 16th day funeral death ceremony of the parents of the minor, this request was acceded to by the petitioners' family. Even after the ceremony, the respondent refused to handover the child to the petitioners' family. Therefore, the first petitioner had lodged a complaint against the respondent and also filed the present petition seeking permanent custody of the child.

6.The learned counsel for the petitioners would further submit that the marriage between the parents of the minor was a love and inter-religious marriage. Though the Suganthi is a Hindu she showed interest in getting married to Rajasekar, who is a Christian as per the Christian rites, and hence, she converted herself to Christian and their marriage was performed in a Church. Out of the wedlock, minor Kevin Maxwell was born on 27.02.2011. The respondent, who is the mother of



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Suganthi initially opposed the marriage and not participated in the marriage. Thereafter, she accepted their marriage. He would further submit that the respondent is a widow, who is doing coolie work and living along with her aged mother, who is also working as cleaning assistant in a Restaurant in Adyar. While they go for their work, they used to leave the child in the neighbourhood. Hence, the respondent is not in a position to take care of the minor child with her meagre income, whereas, the first petitioner has enough source of income to maintain the minor child. He would further submit that the deceased first petitioner has one more son/3rd petitioner herein who is having wife and children, living as joint family and they will take care of the child properly and they will also provide good education to the child and therefore, it would be beneficial to the minor, if he is under the care and custody of the petitioners' family. It is further stated that now first petitioner is no more and his legal heirs are impleaded as petitioners 2 to 4 and they also undertook to take care of the child in his tender and formative age. Hence, the custody of the minor child shall be handed over to the petitioners' family.



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7.The learned counsel for the respondent would submit that the minor is now under the care and custody of the respondent. The respondent is having sufficient income to maintain the child properly and also to provide good education to the child. The parents and brothers of the respondent are residing in and around her house and they will also take care of the minor. Further, the respondent converted to Christian only for the welfare of the child. He would further submit that now the first petitioner, who is the paternal grandfather died and the 2nd petitioner is the paternal grandmother, being an old lady, will not be able to take care of the minor. The petitioners 3 and 4 are the paternal uncle and aunt of the minor, they have also children and it is very difficult for them to take care of the minor also along with their children and to provide good education to the minor child. Therefore, this petition is to be dismissed.

8. Heard both sides and perused the materials available on record.

9.Admittedly, both the parents of the minor died in a road accident. The deceased first petitioner is the paternal grandfather of the minor and the respondent is the maternal grandmother of the minor, who is now



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having the custody of the minor. According to the petitioners, the first petitioner was a Car Technician and was earning Rs.15,000/- per month, besides the rental income of Rs.5,000/- and he has got one more son, who is having wife and children and living as joint family along with the first petitioner. It is also stated in the affidavit that first petitioner's another son(3rd petitioner herein) and daughter-in-law are earning Rs.12,000/- and Rs.8,000/-, respectively and therefore, the total family income derived by the joint family of the petitioners is around Rs.40,000/- per month. However, during the pendency of the original petition, the first petitioner died and subsequently legal heirs of the deceased were brought on record as petitioners 2 to 4. During trial, the 3rd petitioner herein, who was examined as P.W.3 has clearly stated that he is the paternal uncle of the minor and petitioners' family is joint family and they will take care of the welfare of the child in his tender and formative age. He has deposed that the respondent is a coolie worker as she herself suffers for her livelihood and hence, she will not be able to give good education to the child.

10. On the contrary, it is the contention of the learned counsel for



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the respondent that the respondent is having sufficient income to maintain the child, she has also taken LIC Policy and also deposited some amount in Fixed Deposit in the name of the minor. The respondent was converted to Christian only for the benefit of the child and to grow up the child under the Christian customs.

11. This Court having heard the learned counsel and after perusing the materials available on record is of the view that it is difficult to the respondent to take care of the child, she being a coolie worker. Though the respondent has stated that her relatives will take care of the child, naturally we cannot expect others for taking care of the child in all times. Since the 3rd petitioner has stated that he has got children in the equal age of the minor, if the minor stays with them he would get more love and affection and good companion. It is also seen that though the respondent was converted to Christianity for the welfare of minor, her relatives were not Christians, if the minor is grown up with the relatives of the respondent, the child will be brought up with their faith and religious. The respondent has not adduced and produced any oral and documentary evidence to substantiate her case for custody of the child.



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Therefore, in the absence of the same, this Court cannot handover the custody of the child to the respondent. In the considered view of this Court, if the second and third petitioner can be appointed as legal guardians, it will be most beneficial to the minor child. Further, the respondent/maternal grandmother of the child shall be given visitation rights.

12. In view of the above, this original petition is ordered as prayed for and the petitioners 2 and 3 are hereby appointed as legal guardian of the person of the minor child Kevin Maxwell.

24.03.2022

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