



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 13TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

O.P.No. 597 of 2018

In the matter of Guardian and Wards
Act, 1890

And

In the Matter of Minor G.R. Roopika

G.R. Kumar,
S/o. G. Radhakrishnan,
II Floor, 19/2,
Teynampet Ramasamy Street,
Kondithope, Chennai – 600 079.

... Petitioner

-Vs-

G.R. Bharathi,
W/o. G.R. Kumar,
I Floor, DF 3,
Iswaryam Apartments,
25 A, Red Hills Road,
Kolathur, Chennai – 600 099.

... Respondent

Original Petition praying that this Hon'ble Court be pleased to

(a) to declare G.R. Kumar, the Petitioner herein as the Legal Guardian of the person of the Minor, Viz., G.R.Roopika born on 25.09.2006 and to grant Custody of the Minor Child to the Petitioner.

This Original Petition coming on this day before this court for hearing in the presence of Mr.C.T.Murugappan, Advocate for the Petitioner herein

and Mr.K.Myilsamy, Advocate for the respondent herein and upon reading



the petition filed herein and this Court having observed that the respondent is ready and willing to live with the petitioner, further, she has stated that the petitioner can always visit the minor, the petitioner has not established that the respondent mother is acting against the interest and welfare of the minor, therefore, in the absence of the same, considering the age and gender of the minor and also the fact that the respondent has no objection to visit the minor at any time, this Court finds that the petitioner is not entitled to get an exclusive guardian ship and exclusive custody of the minor and when the petitioner has failed to establish that the respondent mother is acting against the interest and welfare of the minor, he is not entitled to get the relief sought for in the petition, **It is ordered as follows:-**

That the Petition in O.P.No. 597 of 2018, be and is hereby dismissed.

2. That the petitioner herein, shall be at liberty to have the visitation right.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 13TH DAY OF APRIL 2022.

Sd/-

ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)



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WEB COPY

ED
13.05.2022

O.P.No. 597 of 2018

ORDER

DATED : 13.04.2022

THE HON'BLE MR. JUSTICE
P. VELMURUGAN

FOR APPROVAL: 13.05.2022

APPROVED ON : 13.05.2022



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This Original Petition coming on this day before this Court for



The petitioner, who is the father of the minor child filed this petition under sections 3, 7 to 10 & 25 of Guardians and Wards Act, 1890, seeking to declare him as legal guardian of the minor child and also for grant of custody of the minor child against the respondent, who is the mother of the minor child.

2. It is the case of the petitioner that the marriage between the respondent and petitioner took place on 11.12.2005 in Chennai. Out of their wedlock, a girl child G.R.Roopika was born on 25.09.2006. The respondent would never allow the child to speak with the petitioner or his family members in her absence and the same continues till date and the child would not mingle with the petitioner or his parents. The respondent insisted a separate matrimonial home. Since the petitioner is earning money only by taking tuition and from that money, it is very difficult to run his family by paying rent and taking care of his aged parents and also the respondent. Therefore, he advised the respondent to adjust with their family members. However, the respondent refused to accept the same and left the matrimonial home without any valid reasons. Even the respondent did not inform the petitioner at the time of attaining puberty by the minor child and the respondent never allowed the petitioner to talk with the minor. The respondent has no independent income and she depends upon her parents.



Therefore, it is difficult for her to take care of the child. The petitioner is the father of the child and he is a natural as well as legal guardian for the minor child and he is not acting against the interest, welfare and well being of the child. The respondent has always tried to portray herself as the primary care giver of the child and in that way she used to make all the decisions for the child.

3. It is also the case of the petitioner that the respondent always shows before the child that any communication either written or verbal which may suggest that the father is not interested in the welfare of the child which would cause an impact on the child as the child is in an impressionable age. The difference of opinion between the petitioner and the respondent should not be used as foundation for alienation of the child from the petitioner. The petitioner is well educated, having sufficient means to provide the best education and facilities for bringing up the child, which the respondent cannot contravert. It is necessity of the child to have a company with her father at this age. Due to the activities of the respondent, the petitioner is missing his child and the child is also missing her father. Hence the petitioner has filed this petition to declare him as legal guardian for the minor and for custody of the minor.



4. Per contra the respondent has stated in her counter that the petitioner is frequently quarreled with the respondent under the ill advice of the mother of the petitioner and ill-treat the respondent. When the respondent went to her parent home, the child attained puberty and when she informed the petitioner and his family, the petitioner said that not to bring the child to the matrimonial home and be remained with the parent home until finishing the formalities. Thereafter, the petitioner asked the respondent to bring the child to the Saravana Stores, Purasawakkam and hence, the respondent brought the child to the public place and in the public place also, the petitioner ill-treated the respondent and the child. The respondent always ready and willing to live with the petitioner by adjusting the family members of the petitioner and the petitioner alone is refusing to take the respondent with the child to the matrimonial home without any valid reason. The respondent filed a petition for restitution of conjugal rights under section 9 of the Hindu Marriage Act and also filed a petition for maintenance under section 125 Cr.P.C and as a counter blast to the said proceedings, the petitioner has filed this present original petition. The petitioner has not made any steps to bring both the respondent and the child to the matrimonial home and even now the petitions for restitution of conjugal rights and maintenance are pending. The petitioner, only under the



child. The petitioner's mother used to fight with the respondent in a filthy language and beaten up her in front of the minor child and when the respondent complaints to the petitioner, he advised the respondent to bear up all the atrocities of his mother and stay in the matrimonial house or leave the house. The situations in the matrimonial home was such a unbearable for both the respondent and the child and the child also lived with the constant fear in the matrimonial house along wiith her mother. The petitioner, who deserted the respondent and the child and failed to be a dutiful father and husband, filed the petition for the custody of the child with false allegation and concocted story with an intention of defeating the petitions filed by the respondent before the family court in HMOP.No.253 of 2018 and M.C.No.48 of 2018.

5. It is the contention of the learned counsel for the respondent that while considering the petition for custody, in selecting proper guardian of the minor, the paramount consideration should be the welfare and well being of the child. The child who is a female and at the adolescence stage, always custody with the mother is needed. The respondent never wanted the petitioner to leave his parents and only look after the respondent. The petitioner has neither take care of the respondent nor the child. The



home to see the child and ready to give an undertaking to that effect and even she expressed her willingness to bring the child to any safer places with the company of the respondent. Therefore, it is only the petitioner in order to escape from the matrimonial O.P and maintenance case filed by the respondent pending on the file of the family court, has filed this petition as if he is very much interested in the custody of the child. Now the female child is aged about 15 years and at this stage, the company of the mother is very much needed. The respondent has no objection for the petitioner to visit the child at any time. Therefore, the petition has to be dismissed.

6. On the side of the petitioner, the petitioner was examined as PW1 and on the side of the respondent, the respondent was examined as RW1 and marked the following documents as Ex.P1 to Ex.P17:

<i>Exhibits</i>	<i>Nature of Document</i>
P1	Marriage photo
P2	Computer generated copy of the birth certificate of minor G.R.Roopika dated 25.09.2006
P3	Original legal notice dated 21.03.2013 issued by the respondent
P4	Office copy of the legal notice dated 22.12.2017 issued by the petitioner.
P5	Original reply notice dated 27.12.2017 sent by the counsel for the respondent
P6	Office copy of Rejoinder to Reply notice dated 02.01.2018
P7	Original Acknowledgment dated 04.01.2018 made by the respondent for things taken by her
P8	Certified copy of the petition in M.C.No.48 of 2018 on the file of IIIrd Additional Family Court, Chennai
P9	Office copy of the legal notice dated 12.03.2018 issued by the



<i>Exhibits</i>	<i>Nature of Document</i>
	petitioner
P10	Office copy of the legal notice dated 15.05.2018 issued by the petitioner.
P11	Copy of the order passed in O.P.No.253 of 2018 by the IIIrd Additional Principal Judge, Chennai
P12	Office copy of the notice dated 25.10.2019 sent by the counsel for the respondent to the petitioner
P13	Copy of the letter dated 07.12.2021 issued by the respondent to the petitioner
P14	Original acknowledgement dated 10.09.2018 given by the respondent for receipt of a sum of Rs.60,000/- from the petitioner
P15	Copy of the affidavit of petitioner/respondent on assets and liabilities for non-Agrarian Deponents filed in M.C.No.48 of 2018
P16	Certified copy of petition filed under section 9 of the Hindu Marriage Act
P17	Office copy of the notice dated 08.07.2021 issued by the counsel for the respondent to the petitioner and the counsel for the petitioner.

7. Heard the counsel and perused the records.

8. Admittedly, the respondent is the wife and both the petitioner and the respondent are the biological parents of the minor child. The relationship of the parties are not in dispute. It is also not in dispute that now the respondent is living in the paternal home and the child is with the mother. According to the petitioner, the respondent insisted the petitioner for arrangement of separate house, for which, the petitioner did not do the same. According to the respondent, she never asked to set up a separate matrimonial home and only the mother of the petitioner caused the mental and physical cruelty on the respondent and under the ill-advice of the



respondent and child from the matrimonial home to the paternal home. The respondent is always ready and willing to live with the petitioner even with their parents. Even though the respondent filed petition under section 9 of the Hindu Marriage Act for restitution of conjugal rights and for maintenance under section 125 of Cr.P.C., the petitioner is not ready to take the respondent and the child to his home and for the petitions filed by the respondent, as counter blast, the petitioner has filed this original petition seeking custody of the minor child. Now the age of the minor is 15 years, being a female child to be with the mother is safe and in the interest of the minor, the petitioner can always visit the minor and the respondent has no objection for the same. Though the petitioner has filed the petition to declare him as the legal guardian, it is settled law that the father and mother are the natural guardians to the minor. Therefore, the law itself says that the father and mother are the legal guardians and the court need not declare it.

9. The only point for consideration is with whom the minor has to live. It is to note that the child is a female aged about 15 years and the respondent is the wife of the petitioner and mother of the child and she is always ready and willing to live with the petitioner and she also filed the petition for restitution of conjugal rights pending with the family court which clearly shows that the respondent is ready and willing to live with the



petitioner. Further, she has stated that the petitioner can always visit the minor. The petitioner has not established that the respondent mother is acting against the interest and welfare of the minor. Therefore, in the absence of the same, considering the age and gender of the minor and also the fact that the respondent has no objection to visit the minor at any time, this Court finds that the petitioner is not entitled to get an exclusive guardian ship and exclusive custody of the minor. When the petitioner has failed to establish that the respondent mother is acting against the interest and welfare of the minor, he is not entitled to get the relief sought for in the petition.

10. With the above observations and reasons, this petition stands dismissed. However, the petitioner is at liberty to have the visitation right.

Sd./- P.V.J
13/04/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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