



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 27TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

O.P. No.123 of 2016

and

A.No.941 of 2016

In the matter of Guardian and Wards
Act, 1890;

and

In the matter of minor K.Ramanath

S.Kulandaivelan,
S/o.S.P.Subbiah,
18/3, Delux Apartments,
VOC Nagar, 1st Main Road,
Anna Nagar East,
Chennai - 600 102.

...Petitioner/Applicant

versus

S.Kalyani,
W/o. S.Kulandaivelan,
Flat No.5, Plot No.25,
Divya Flats,
Jaya Jeevan Ram Nagar,
Selaiyur, Chennai - 600 073.

...Respondent/Respondent

O.P. No.123 of 2016:-

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

judgment and decree against the Respondent for:-



a) appointing the Petitioner as the guardian of the person of the minor child K.Ramanath.

b) directing the Respondent to handover the custody of the minor son K.Ramanath to the Petitioner.

c) directing the Respondent to pay the cost of this petitioner.

A.No.941 of 2016:-

Application praying that this Hon'ble Court be pleased to grant visitation rights for the minor child K.Ramanath presently in the clinging custody of the Respondent, pending disposal of the above original petition.

This Original Petition alongwith the application coming on this day before this Court for hearing in the presence of Mr. Jeyesh Dolia for M/s. Aiyar & Dolia, Advocates for the respondent herein and the petitioner herein, not appearing in person or by advocate and upon reading the petition filed in O.P.No.123 of 2016 and the order dated 14.03.2018 made in A.No.941 of 2016 and the other exhibits therein referred to and upon perusing the evidence adduced therein and this Court having observed that both the father and mother are guardian of the minor, once again filing of petition to claim guardianship of the minor, cannot be granted unless, the



as a guardian, **it is ordered as follows:-**

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That since the petitioner/father is also a legal guardian, he has got visitation right to visit the minor child without disturbing the respondent/mother and her family members and the education of the child.

2) That the O.P.No.123 of 2016, be and is hereby dismissed.

3) That the connected application do stand closed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 27TH DAY OF APRIL 2022.

Sd/-

ASSISTANT REGISTRAR(Comm. Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ARS
24.05.2022

O.P. No.123 of 2016
and
A.No.941 of 2016

ORDER

DATED: 27.04.2022

THE HON'BLE MR. JUSTICE
P.VELMURUGAN

FOR APPROVAL : 24.05.2022

APPROVED ON : 31.05.2022



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b) directing the Respondent to handover the custody of the minor son K.Ramanath to the Petitioner.

c) directing the Respondent to pay the cost of this petitioner.

A.No.941 of 2016:-

Application praying that this Hon'ble Court be pleased to grant visitation rights for the minor child K.Ramanath presently in the clinging custody of the Respondent, pending disposal of the above original petition.

This Original Petition alongwith the application coming on this day before this Court for hearing, **the Court made the following order:-**

This Original Petition has been filed under Sections 3, 7 to 10, 12, 17 and 25 of the Guardian & Wards Act, 1890 read with Order XXI Rule 2 & 3 of Original Side Rules, seeking to appoint the petitioner as the guardian of the minor and to direct the respondent to handover the custody of the minor and also for the cost of the petition.

2 The case of the petitioner is that the marriage between the petitioner and the respondent took place on 05.06.2011 at NKR



and the same was registered on 29.02.2013 in the office of the Sub Registrar, Anna Nagar, Chennai in S.No.273 of 2013. Out of the wedlock, a male child namely Master K.Ramanath was born on 07.03.2012. Thereafter, the respondent without any reason left the matrimonial home along with the minor child who was then 9 months old. The petitioner tried to meet his minor son many times but, he was turned back by the respondent and her father and when he tried to call the respondent to meet his minor son, he was threatened and abused in filthy language by the father of the respondent. Thereafter, upon ill advise, the respondent got divorce from the petitioner in H.M.O.P.No.58 of 2015 which was later transferred and re-numbered as O.P.No.2281/2017 on the file of the III Additional Family Court, Chennai. Against which, the petitioner has filed an appeal and the same is pending before the Division Bench of this Court. As a dedicated husband the petitioner have been showering love and affection on the respondent and the minor son and never ill treated them or even scolded them at any point of time. But the respondent only to live a posh life for her, has deserted the petitioner at a time when her care is more needed. The respondent's action of deserting the petitioner would speak volumes about the respondent's don't care attitude and this character will be detrimental in bringing up the minor child. Moreover, the petitioner has been deprived of his right to meet the child at the respondent's house. Further the respondent



is employing and she comes home only once in a week and the parents of the respondent are aged persons and therefore, they could not take proper care of the minor child and that the minor child is living in an atmosphere where there would be no one to guide him properly. The petitioner is a software engineer by profession working in a reputed company. He left his overseas job and joined a company in Chennai only to take care of the respondent and the minor son and that the petitioner would definitely offer proper education and health care to the minor son. Further the minor is being abused which has taught to dislike the petitioner. Therefore, the present petition has been filed to appoint the petitioner as guardian and for the custody of the minor child.

3 Even though, the evidence has been completed and the matter is listed before this Court for the 3rd time for petitioner's side arguments, there is no representation for the petitioner. The learned counsel for the respondent appeared in all the hearings.

4 The petitioner/father was examined as P.W.1 and marked 6 documents as Exs.P.1 to P.6 and Ex.P.7 to P12 were marked through cross examination of the respondent/mother who was examined as R.W.1.

5 Since already the evidence was recorded and the documents were marked, this Court is inclined to pass orders on merit with the



6 Heard the learned counsel for the respondent and perused the materials available on records.

7 The petitioner is the father and the respondent is the mother of the minor child. The petitioner/father has filed this present Original Petition for appointing him as guardian for the minor and also for the custody of the minor.

8 The petitioner has stated that the respondent/mother left the matrimonial home without any valid reason and the minor child is now living in an atmosphere where there would be no one to guide him properly and since the petitioner is the father and natural guardian, he has to be appointed as guardian to the minor and the custody has to be handed over to him. However, he has not established that the respondent/mother is acting against the interest and welfare of the minor child.

9 Admittedly, both the parents are natural as well as legal guardians. To decide this petition, the Court has to see the interest and welfare of the minor as a paramount consideration. When both the parties are parents of the minor and if they want to exclude one of the parent, they have to establish that the other parent is acting against the interest and welfare of the minor or the custody with the other parent is dangerous to the life and future of the minor.



Court finds that though the petitioner/father is also a legal guardian, he has not established that the respondent/mother is acting against the interest and welfare of the minor or the custody of the minor with the respondent/mother is dangerous to the life and future of the minor. Therefore, the petitioner/father is not entitled for the claim sought for in the petition. Further when the act itself clearly says that both the father and mother are guardian of the minor, once again filing of petition to claim guardianship of the minor, cannot be granted unless, the petitioner/father establishes that the respondent/mother is unfit to continue as a guardian.

11 Accordingly, this Original Petition is dismissed. Consequently, connected application is closed. However, since the petitioner/father is also a legal guardian, he has got visitation right to visit the minor child without disturbing the respondent/mother and her family members and the education of the child.

Sd/-P.V.J.
27.04.2022

List of witness examined on the side of the petitioner:

S.Kulandaivelan - P.W.1

List of documents marked through the petitioner:

<i>Exhibits</i>	<i>Nature of the documents</i>
P1	The copy of the Marriage certificate dated 05.06.2011
P2	The Joint Family Photograph
P3	The copy of the Birth Certificate of Minor K.Ramanath dated



<i>Exhibits</i>	<i>Nature of the documents</i>
	07.03.2012
P4	The certified copy of the petition in ECOP No.2926/2015
P5	The copy of the Address & Id Proof
P6	The certified copy of the petition in HMOP NO.58/2015, now transferred to III Additional Family Court, Chennai and re-numbered as O.P.No.2281 of 2017
P7	Certified copy of the marriage certificate.
P8	Marriage agreement between parents of both parties.
P9	Community Certificate of R.W.1
P10	Other Backward Class Certificate of R.W.1 issued by Tahsildar
P11	Copy of the order in A.No.941 of 2016 dated 15.11.2016
P12	Copy of the petition filed by the petitioner seeking to set aside the ex-parte order dated 01.04.2019 passed in O.P.No.123 of 2016

List of witness examined on the side of the respondent:

S.Kalyani – R.W.1

List of documents marked through the respondent: Nil

Sd/-P.V.J.
27.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

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