



O.P. No.588 of 2021

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ABDUL QUDDHOSE, J.

This petition has been filed under Sections 3, 7 to 10 and 25 of the Guardian and Wards Act VIII of 1890 read with Order XXI Rules 2, 3 and 11 of Original side Rules.

2. The petition has been filed for the appointment of the petitioner as a Legal Guardian for the Minor Children D. Narun born on 21.10.2009 and D.Megana born on 26.07.2016 and for granting permanent custody to the petitioner. The Minor Children born to D. Roselin, the respondent herein. Mr.S.Dhanasekar, the father of the Minor children died on 09.05.2021. His marriage with the respondent ended in divorce by order of the III Additional Family Court, Chennai dated 23.10.2019 passed in O.P. No.3145 of 2017. The petitioner is the paternal aunt of the Minors D. Narun and D. Megana. Ever since the death of S. Dhanasekar, the petitioner is having custody of the Minors D.Narun and D. Megana. Even after the dissolution of the marriage between D.Roselin, the respondent herein and S.Dhanasekar, the custody of the Minor children were only with S.Dhanasekar, who died on 09.05.2021. In such circumstances, the petitioner has sought for appointing her as a guardian and for granting permanent custody of the Minors in her favour.



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WEB COPY 3. Before the learned Master, the petitioner was examined as a witness (PW1). In her deposition, she has reiterated the contents of OP No.588 of 2021. Through PW1, the following documents were marked as Exhibit :

<i>Exhibits</i>	<i>Nature of the documents</i>
P1	Computer generated death certificate of S. Menaga, who died on 27.08.2000
P2	Computer generated death certificate of C. Seetharaman, who died on 03.01.2002
P3	Computer generated birth certificate of D. Narun, who was born on 21.10.2009
P4	Computer generated birth certificate of D. Megana, who was born on 26.07.2016.
P5	Photocopy of the discharge summary dated 01.03.2017 in respect of Mrs.D. Roselin, the respndent.
P6	Certified copy of the order dated 23.10.2019 in O.P. No.3145 of 2017 passed by III Additional Family Court, Chennai.
P7	Computer generated death certificate of S. Dhanasekar, who died on 09.05.2021
P8	Computer generated Legal Heirship certificate dated 25.06.2021 in respect of Dhanasekar
P9	Photocopy of the petitioner's Aadhaar card bearing No.5559 7038 2980
P10	Photocopy of the Aadhaar card of Roselin, the respondent, bearing No.3284 3247 9965
P11	Original bonafide certificate of Minor D. Narun
P12	Original bonafide certificate of Minor D. Megana
P13	Declaration of willingness
P14	Affidavit given by the petitioner's husband stating that he has no objection to appoint his wife Kalyani as guardian
P15	Affidavit given by the petitioner's sister stating that she has no objection to appoint her sister Kalyani as guardian
P16	Affidavit given by the petitioner's brother-in-law stating that he



<i>Exhibits</i>	<i>Nature of the documents</i>
	has no objection to appoint his sister-in-law Kalyani as guardian

4. As seen from the evidence available on record, it is clear that the marriage between the respondent and S. Dhanasekar got dissolved by an order dated 23.10.2019 passed by the III Additional Family Court, Chennai in O.P. No.3145 of 2017 and the said order has been marked as Ex.P6. S. Dhanasekar also died on 09.05.2021 as seen from his Death Certificate which has been marked as Ex.P7.

5. The notice sent in this petition to the respondent has also been duly received by her and her name is also printed in the cause list today. Despite receipt of the notice, the respondent failed to enter appearance in O.P. No.588 of 2021. Therefore, it can be inferred that she has no objection for the appointment of the petitioner as the legal guardian for the Minors D. Narun and D. Megana.

6. It is also seen from the evidence that ever since, the divorce order dated 23.10.2009 passed in O.P. No.3145 of 2017 by the III Additional Family Court, Chennai, the Minors D. Narun and D. Megana were only under the custody of S.Dhanasekar till his death and thereafter with the petitioner.

7. The learned counsel for the petitioner also submits that the respondent is now staying in an home and she is not mentally fit to take care of the Minors



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which is supported by the Discharge summary dated 01.03.2017 issued by the hospital, which has been marked as Ex.P5. The petitioner's husband has also given no objection for the appointment of the petitioner as the legal guardian for the Minors D. Narun and D. Megana and his affidavit has been marked as Ex.P14. Ex.P15 is the affidavit given by the petitioner's sister stating that she has no objection for appointment of the petitioner as a legal guardian for the Minors. Ex.P16 is an affidavit given by the Brother-in-law of the petitioner stating his no objection for appointment of the petitioner as the legal guardian for the Minors.

8. After giving due consideration to the pleadings and the evidence available on record, this Court is inclined to grant the relief as prayed for in this petition by appointing the petitioner as the legal guardian for the Minor Children D. Narun, born on 21.10.2009 and D. Megana, born on 26.07.2016 and grant permanent custody of the said Minor Children to the petitioner. Accordingly, this petition is allowed.

06.01.2022

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ABDUL QUDDHOSE, J.

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