



O.P.No.711 of 2021

C.V. KARTHIKEYAN, J.

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The Original Petition had been filed taking advantage of Sections 3, 7, 10 and 25 of the Guardians and Wards Act, 1890 and the relevant rules of the Original Side of the Madras High Court, seeking guardianship and custody of the minor child Yogasankari, who was born on 10.06.2017.

2.The petition had been filed by the maternal grandmother. The respondent is the father of the child.

3.The respondent had married the daughter of the petitioner, Sentamizhselvi on 25.10.2015 and minor child Yogasankari was born on 10.06.2017.

4.The daughter of the petitioner died on 23.04.2020, owing to health complications.

5.It had been claimed that the minor child had been in the custody of the petitioner. There were various other statements made in the petition relating to the nature of the marital life of the respondent and the daughter of the petitioner, but

those aspects are not germane to decide this petition and therefore, I am



consciously not recording the same. However, it is suffice to point out that claiming that the child had been in the custody of the petitioner, the petition had been filed seeking custody and guardianship.

6. On service of notice, the respondent had also entered appearance. There were applications filed seeking visitation rights and also permission for the respondent to interact with the child through video conference. Orders have been passed in that regard during the pendency of the Original Petition.

7. Thereafter, the petitioner appeared in person since the learned counsel apparently had withdrawn appearance. The petitioner, is a resident of Cuddalore and the respondent is a resident of Puducherry. On interacting with the petitioner, this Court came to the opinion that the matter could be referred to the Legal Services Authority at Cuddalore and a request was placed to the Chairman of the Legal Services Authority, Cuddalore, the Principal District Judge to invite both the petitioner and the respondent and examine about the bondage of the child with the respondent. This step had to be taken because the petitioner is also quite advanced in age and also had financial difficulties in taking care of the child.



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8.A report had been received on 07.11.2022 in D.No.1962 of 2022 from the District Legal Services Authority at Cuddalore and signed by the Chairman/Principal District Judge, Cuddalore. The report is very revealing. I had expressed my appreciation of Mr.S.Jawahar, the learned Principal District Judge for facilitating an interaction among the petitioner, respondent and the child and also for reducing his observations in writing. It had also been stated that the views of the learned Principal District Judge would be given due weightage by this Court.

9.In the report, the learned Principal District Judge had stated that the petitioner/Amsalakshmi, respondent/S.Saravanan @ Sankar and minor child Yogasankari, appeared on 04.11.2022 at 3.00 pm. He verified their identities and permitted interaction among them for three hours. The interaction concluded at 6.00 pm. Let me extract the observations of the learned Principal District Judge, as he had recorded the same:

“1.The Petitioner, Tmt.Amsalakshmi is aged 73 years and her husband is aged 83 years. They were running a Ice factory and for the past 3 years it was closed. They were supported by their Elder daughter.

2.The Respondent, Tr.S.Saravanan @ Sankar is acting Driver and Tailor. He was working as Theatre Assistant in JIPMER Hospital, Pondicherry. Now he is doing part time job as acting Driver and Tailor.

3.The Minor Child Yogasankari came along with his Father/Respondent. She was closely attached to her father. She not even turned her head to the voice of the petitioner. The child is living with her



father. The Respondent, Saravanan @ Sankar is doing all the personal daily needs of the child such as bathing, feeding, taking to the School etc.,

4.The Respondent is not having any objection over the Petitioner to see the minor child. He told to the petitioner that she may come to his home at any time to see her their granddaughter and he is having no objection for that. He also expressed his no objection to talk to her granddaughter either through phone (or) in person. But, he refuses to give custody of the minor child to the petitioner due to in secured surroundings around the house of the petitioner.

5.The respondent is residing at Ariyankuppam at Pondicherry and the minor child is studying in a school at Ariyankuppam, Pondicherry. The Respondent/Father is taking the minor child to school and getting back her home from school.

6.As far as the bondage and affinity is concerned, the minor child Yogasankari is very much attached with her father/respondent, Saravanan @ Sankar. From the words of the Minor Child Yogasankari, it is seen that her father is doing all her daily needs. She is happily living with her father. she doesn't want to go with her grandmother/petitioner. Further, the petitioner and her husband are too aged (i.e) 73 years and 83 years respectively. It will be very difficult for them to take care of the Minor Child Yogasankari”.

10.In the extracted portion above, the learned Principal District Judge, Cuddalore, had also spoken about the financial status of the petitioner and her husband, who are both aged 73 and 83 years respectively and the fact that the ice factory which they had been running had been closed for three years and that they are supported by their elder daughter. It is quite obvious that in that situation, the



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grant of custody and guardianship of the minor child to the petitioner would only add to the financial burden of the petitioner herein.

11.It had also been stated that the respondent is working as a Driver and also as a Tailor and also as a Senior Assistant in Jipmer Hospital at Puducherry. These are income earning employments and from any one of the three sources there is always a possibility of the respondent earning money to sufficiently support himself and also the minor child. It had also been stated that the child came with the respondent and that she is living with the respondent. It was also stated that the respondent is taking care of the personal needs of the child and is also taking her to school.

12.The respondent also expressed that he has no objection for the petitioner visiting the child and he also stated that the child is studying in a school at Ariyankuppam at Pondicherry. It is to be noted that it would be advantageous to the child that the school studies are not disturbed by change in schools. She would have developed friendships with young children of her young age and fostering such friendships is very important in the development of any young child.



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13. In view of the above observations, I would direct that the guardianship and the permanent custody of the child be handed over to the respondent herein / father of the child. The petitioner may visit the residence of the respondent at any time and I am confident that the respondent would facilitate the petitioner to have interactions with the child. The relief sought in the petition therefore not granted and the petition stands dismissed.

14. The respondent is declared to be the guardian of minor child Yogasankari, who was born on 10.06.2017 with respect to the person and also the properties of the said child. The respondent is also directed to retain permanent custody of the minor child.

15. The Original Petition stands dismissed.

23.11.2022

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Note:

The report of the Chairman/Principal District Judge, Cuddalore may be annexed with the order copy.



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