



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.669 of 2020

In the matter of the Guardian and
Wards Act, 1890 and

In the matter of minor S.K.Adhvikh
aged about 3 years.

C.K.Sumeeth Kumar
S/o.Sajeeth Kumar,
No.14, Sidharth Nagar,
2nd Cross Street,
Nanmangalam,
Chennai 600 117.

... Petitioner/Applicant

versus

J.Preetha
W/o.C.K.Sumeethkumar
No.11/220, B2, 3rd Cross Street,
Poombugar Nagar,
Kolathur,
Chennai 600 099.

....Respondent/Respondent

Original Petition praying that this Hon'ble Court be pleased to
kindly grant Permanent Guardianship and Custody of the Minor Son
S.K.Adhvik to the Petitioner Father.

This Original Petition having been heard on 16.03.2022 in the
presence of Mr.V.Giri Shankar, Advocate for the Petitioner herein, and



the petition filed herein, and the order herein dated 16.02.2021, and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto, and this Court having observed that the petitioner/father is not entitled for the guardianship and permanent custody of the minor child as sought for in the petition and considering the tender age of the minor child, the respondent/mother is a fit person to have the custody of the minor child as natural and legal guardian, **it is ordered as follows:-**

That the O.P.No.669 of 2020 be and is hereby dismissed.

2. That the petitioner herein shall be at liberty to visit the child without disturbing the respondent and her parents and the education of the child.

3. That the connected application if any 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 (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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O.P. No.669 of 2020

ORDER :-

DATED : 27.04.2022

THE HON'BLE MR.JUSTICE
P.VELMURUGAN

FOR APPROVAL: 27.04.2022

APPROVED ON: 27.04.2022



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(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 27th DAY OF APRIL 2022

THE HON'BLE MR.JUSTICE P.VELMURUGAN

RESERVED ON	: 16.03.2022
PRONOUNCED ON	: 27.04.2022

O.P.No.669 of 2020

C.K.Sumeeth Kumar
S/o.Sajeeth Kumar,
No.14, Sidharth Nagar,
2nd Cross Street,
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Kolathur,
Chennai 600 099.

....Respondent/Respondent

Original Petition praying that this Hon'ble Court be pleased to kindly grant Permanent Guardianship and Custody of the Minor Son S.K.Adhvik to the Petitioner Father.

This Original Petition coming on this day before this court for hearing

the court made the following order:-



This Original petition has been under Section 3, 7, 10, 20 to 25 of the Guardian and Wards Act, 1890 read with Order XXI, Rules 2&3 of the Original Side Rules seeking for grant of permanent custody of the minor son S.K.Adhvik to the petitioner.

2. The petitioner is the father and the respondent is the mother of the of the minor child. The petitioner and the respondent got married on 05.02.2016 at Sreekrishna Temple, Guruvayur, Guruvayur Village, Charakkad Taluk, Thrissur District, Kerala and the reception was held at Hotel Bhimas at Vadapalani. Out of their wedlock, a male baby was born on 24.06.2017 and was named as S.K.Adhvik and they set up their matrimonial home at Chennai. Thereafter, due to some misunderstanding, the respondent/mother left the matrimonial home. Subsequently, the dispute was settled. Even thereafter, the respondent/mother not behaved as a dutiful wife as well as mother and again left the matrimonial home. The petitioner and his parents tried to sort out the differences of opinion and to bring a congenial atmosphere between the petitioner and the respondent to once again start their life a fresh. But the respondent and her parents did not even allow the petitioner and his parents inside their house and also insulted them. Further, the respondent/mother not even allowed the petitioner to see his minor son. As a father, the petitioner is equally entitled to visit and interact with his child and the respondent/mother cannot preclude the rights



and privileges of a father. The parents of the respondent are also equally responsible for this problem as they failed to give good advices to the respondent/mother to live with the petitioner/father and to allow the petitioner to interact with the minor son. This kind of a behaviour severely affected the rights of the petitioner as a father of the minor son. Therefore, the petitioner has filed the present petition seeking for complete and full custody of the minor son and if the minor is continued to be in the custody of the respondent/mother, there is a chance of the minor to develop a hatred towards the petitioner/father as the respondent always speaks ill about the petitioner/father to the minor son. Therefore, the petitioner has to be appointed as the guardian to the minor son.

3. The case of the respondent/mother as per the counter is that the relationship between the petitioner and the respondent is admitted and the paternity of the child is also admitted. However, she denied the allegations levelled in the petition against her. As per the respondent/mother that the petitioner/father has been leading an immoral life along with a lady namely Vaishnavi who is a divorcee. The respondent/mother made requests to the petitioner/father to change his character. But he refused to do the same and also ill-treated the respondent/mother. Therefore, she left the matrimonial home and lived with her parents along with the child. Further the

petitioner/father openly declared that he is interested to live with the said



Vaishnavi permanently and he did not show any love and affection with the minor child. Though the respondent/mother initially filed a petition for restitution of conjugal rights in H.M.O.P.No.1163 of 2020 on the file of the I Additional Family Court, Chennai, subsequently since the petitioner/father refused to get rid of the illegal relationship with the said Vaishnavi and to change his character despite several requests made by the respondent/mother, she withdrew the said petition considering the welfare of the child and filed a divorce petition in O.P.No.2960 of 2020 on the file of the II Additional Family Court, Chennai, which is pending for adjudication. The petitioner has no bonafide reason for taking the custody of the child from the respondent/mother. As a dutiful mother, the respondent/mother has been taking every care of the minor child and providing food, medicine and education etc. to the minor child. But the respondent did not show any interest and affection on the minor child and he has not even spent single pie for the maintenance of the child. Only in order to harass the respondent//mother, he has filed the present petition. Since the petitioner/father is leading an immoral life along with another woman, he could not act for the interest of the minor child and therefore, if the custody is handed over to the petitioner, the welfare of the minor child would be affected. Now the age of the minor is below 5 years and at the tender age, the child would need the natural love and affection of the mother



and that the respondent/mother has got every right to have the custody of the minor child. Therefore, the petition is liable to be dismissed.

4. The petitioner/father was examined as P.W.1 and marked 4 documents as Exs.P.1 to P.4.

5. The respondent/mother was examined as R.W.1 and marked Ex.R1.

6. Heard both sides and perused the records.

7. Admittedly, the relationship between the petitioner and the respondent is not in dispute and the paternity of the child is also not in dispute. The petitioner is none other than the husband of the respondent and father of the minor child.

8. According to the petitioner/father, the respondent left the matrimonial home without any valid reason. Despite of much efforts taken by the petitioner, she did not return to the matrimonial home. Eventhough initially she filed a petition for restitution of conjugal rights, subsequently she withdrew the said petition and filed a petition for divorce without any valid reason. The petitioner is the father of the minor child and he is a natural as well as legal guardian. He has got every right to have the custody of the minor child and he is having love and affection towards his minor son. His parents also have love and affection towards their minor grandson.

Without any valid reason, the respondent/mother deprived the legal rights of the petitioner/father.



9. According to the respondent/mother, though she admitted the relationship between her and the petitioner, she has specifically made allegations against the petitioner/father that he is leading an immoral life and having illegal intimacy with one Vaishnavi who is a divorcee. However, for the interest of the minor child, the respondent/mother was ready to live with the petitioner/father and requested him to change his character. But he refused the same and openly he has stated that he wanted to live with that lady permanently and he does not want to live with the respondent/mother. Therefore, the respondent had no other option except to file a petition for divorce. Further, the petitioner/father has not taken any care of the minor child and he has not spent any money for the welfare of the child. According to the respondent/mother, a person who is having an immoral character with other lady who is a divorcee, could not be a good father to a child who born through his first wife. Therefore, if the custody of the child is handed over to the petitioner, the welfare of the child would be affected. In order to substantiate her allegation against the petitioner/father, she marked Ex.R1, R1 series are the print out copies of photos with C.D. and affidavit under Section 65B of Indian Evidence Act.

10. A perusal of the entire materials especially Ex.R1 clearly shows that how the petitioner/father was very close with the said lady. However that may not be a sole ground for rejection of custody. The respondent is



none other than the mother of the minor child. Though the petitioner/father is a legal guardian of the minor child, he has neither proved that if the custody of the minor is continued to be with the respondent/mother, it will affect the interest of the minor child nor he has established that the mother is acting against the interest and welfare of the minor child. Under these circumstances, the petitioner/father is not entitled for the guardianship and permanent custody of the minor child as sought for in the petition. Considering the tender age of the minor child, the respondent/mother is a fit person to have the custody of the minor child as natural and legal guardian.

11. Accordingly this Original Petition is dismissed with liberty to the petitioner to visit the child without disturbing the respondent and her parents and the education of the child. Consequently, connected application is closed, if any.

Sd./-P.V.J.
27.04.2022

List of witness examined on the side of the petitioner;

C.K.Sumeeth Kumar – P.W.1

List of documents marked through the petitioner;

Exhibits	Nature of the documents
P1	The photocopy of Aadhaar Card
P2	The print out copy of Birth Certificate of Minor Son
P3	The original photo of he Minor Son
P4	The photocopy of order copy of the HMOP No.1163 of



Exhibits	Nature of the documents
	2020

List of witness examined on the side of the respondent;

J.Preetha – R.W.1

List of documents marked through the respondent:

Exhibits	Nature of the documents
R1	(Series) Print out copies of photos with C.D.

Sd./-P.V.J.
27.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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