

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 21ST DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

O.P.No. 719 of 2021

and

A.No. 384 of 2022

**O.P.No. 719 of 2021 :-**

In the matter of Guardian And Wards  
Act,

And

In the matter of the custody of the  
minor Children Tanush Chava and  
Tarun Chava

Usha Kiran Anné,  
W/o. Mr. Kiran Kumar Chava,  
D/o. Mr. A.S. Rao,  
23, Thambusamy Road,  
Kilpauk, Chennai – 600 010.

... Petitioner

-Vs-

Kiran Kumar Chava alias Kiran Chava,  
S/o. Mr. C.S. Durgaprasad,  
2451 Midtown Avenue Unit 1304  
Alexandria, Virginia 22303  
United States of America.

... Respondent

Original Petition praying that this Hon'ble Court may be pleased to  
grant the Petitioner exclusive and permanent custody of the minor children,  
Tanush Chava and Tarun Chava born on 16.04.2008.

**A.No. 384 of 2022 :-**

Kiran Kumar Chava alias Kiran Chava,  
S/o. Mr. C.S. Durgaprasad,  
2451 Midtown Avenue Unit 1304  
Alexandria, Virginia 22303  
United States of America.

... Applicant/Respondent

-Vs-

Usha Kiran Anne,  
W/o. Mr. Kiran Kumar Chava,  
D/o. Mr. A.S. Rao,  
23, Thambusamy Road,  
Kilpauk, Chennai – 600 010.

... Respondent/Petitioner

Application praying that this Hon'ble Court be pleased to reject the  
Petition in O.P.No. 719 of 2021 pending on the file of this Hon'ble Court  
Under Sec 25 of the Guardians and Wards Act 1890.

This Original Petition along with this application having been heard  
on 09/03/2022 in the presence of M/s.Suchit Anant Palande, Advocate for  
the petitioner in O.P.No. 719 of 2021 and for the respondent in A.No. 384  
of 2022 and Mr.L.Rajasekar, Advocate for the respondent in O.P.No. 719 of  
2021 and for the applicant in A.No. 384 of 2022 and upon reading the  
petition filed in O.P.No. 719 of 2021 and the Judges Summons and the  
Affidavit of Kiran Kumar Chava and the Counter Affidavit of Usha Kiran  
Anne filed in A.No. 384 of 2022 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 the learned counsel for the

respondent having submitted that since the children are now residing in India i.e. in Chennai, this Court has the jurisdiction and he relied on the referred judgments in support of his contention and therefore, once they admitted that they are the citizens of U.S.A. and that the applicant has also moved the American Court and the case is pending for disposal and also the matter is posted for trial at the end of March 2022, decisions rendered by the learned counsel for the respondent are not applicable to the present case at hand and **It is ordered as follows :-**

That the O.P.No. 719 of 2021 be and is hereby rejected.

2. That the respondent/mother herein, shall be at liberty to work out her remedy in case No. CK 2021-14141 pending before circuit Court of Fair Fax County, United States of America.

3. That the A.No. 791 of 2022 do stand closed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 21ST DAY OF MARCH 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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ED

30.03.2022

O.P. No. 719 of 2021  
and  
A.No. 384 of 2022

ORDER

DATED : 21/03/2022

THE HON'BLE MR. JUSTICE  
P. VELMURUGAN

FOR APPROVAL : 31.03.2022

APPROVED ON : 31.03.2022

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23, Thambusamy Road,  
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... Respondent/Petitioner

Application praying that this Hon'ble Court be pleased to reject the  
Petition in O.P.No. 719 of 2021 pending on the file of this Hon'ble Court  
Under Sec 25 of the Guardians and Wards Act 1890.

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

|                                                                                        |                   |
|----------------------------------------------------------------------------------------|-------------------|
| <b><u>A.No.384 of 2022</u></b><br><b><u>in</u></b><br><b><u>O.P.No.719 of 2021</u></b> |                   |
| <b>RESERVED ON:</b>                                                                    | <b>09.03.2022</b> |
| <b>PRONOUNCED ON:</b>                                                                  | <b>21.03.2022</b> |

**P.VELMURUGAN.,J**

This Application has been filed by the applicant to reject the Original  
Petition in O.P.No.719 of 2021 pending on the file of this Court.

2. The applicant is the respondent in O.P.No.719 of 2021, who is the father of the minor children. The respondent herein is the petitioner in O.P.No.719 of 2021, who is the mother of the minor children. The respondent/mother of the minors filed the Original Petition to grant her exclusive and permanent custody of the minor children, Tanush Chava and Tarun Chava, who were born on 16.04.2008. While pending the said Original Petition, the respondent/father of the minor children has filed this present application under Order VII Rule 11 C.P.C., to reject the petition in O.P.No.719 of 2021, which is pending before this Court.

3. Learned counsel for the applicant/father submitted that the applicant and the children are American citizens governed by U.S.Laws and Courts and this Court has no jurisdiction to deal with the subject matter. The two minor sons of the applicant and respondent were born in United States of America and they are neither ordinary residents of India nor domiciled in this country and this Court's jurisdiction cannot be invoked. He further submitted that the two minor sons continue to be the students of American School and presently pursuing their studies by on-line mode. The provisions of the Guardians and Wards Act, 1890 would not apply to the citizens of foreign countries. Though originally the provisions of the Act

were applied to the British subjects, the provision, namely Section 5 of the Act was removed in the year 1951 indicating that it can apply only to Indian citizens.

4. The learned counsel for the applicant further submitted that, even if the parties are holding OCI (Overseas Citizen of India) cards, they do not become a citizen of this country and their rights as OCI card holders are subject to the provisions of Citizenship Act, 1955 and he referred to Section 7-B of the Citizenship Act. He further submitted that the applicant is the father and natural guardian of the minor sons, who are aged about 13 years. Further, he submitted that the applicant has moved the jurisdictional Court namely, Circuit Court of Fair Fax County, United States of America in Case No.CK2021-14141 for the relief of custody of children as natural guardian of the minors and the same is pending before the said Court in United States of America. The trial has been fixed on 28, 29 and 30<sup>th</sup> of March 2022. Therefore, this Court has no jurisdiction. Neither the applicant nor the children are citizens of India and the minor sons are residing in America and hence the applicant has invoked the jurisdiction of the Court at America. Therefore, this Original Petition is not maintainable before the Court in India.

5. Learned counsel for the respondent/mother submitted that the provisions of the Guardians and Wards Act, 1890 do apply to the citizens of foreign countries. The Indian Courts including the Supreme Courts have again and again passed orders on matters related to children who are not Indian Citizens. He placed reliance upon the following judgments:

*i. 1998 (1) SCC 112 [ Dhanwanti Joshi Vs. Madhav Unde] – 4 November 1997*

*ii. 2011 (6) SCC 479 [ Ruchi Majoo Vs. Sanjeev Majoo ]– 13 May 2011*

*iii. 2017 (8) SCC 454 [. Nithya Anan Raghavan Vs. State of NCT of Delhi ] -3 July 2017*

*iv. 2018 (2) SCC 309 [Prateek Gupta Vs. Shilpi Gupta]– 6 December 2017*

Further, he submitted that the applicant has not furnished the copy of the latest comprehensive notification issued by the Central Government regarding the risk of OCI holders moving to Indian Courts for custody of minor children, who are not Indian Citizens as mentioned in paragraph 2(B). Further, Sections 7 and 12 of the Guardians and Wards Act are applicable to the respondent/mother. The respondent being the mother of the minor children, is entitled to be the guardian of the children, considering the welfare of the children and she never removed the children from the custody of the applicant in U.S.A and brought to India. Reasons stated in the affidavit of the applicant are not correct and therefore the Application has to

be dismissed and the Original Petition may be disposed of on merits. Since on the date of filing of the petition, minors were in India, they are ordinary residents within the jurisdiction of this Court. Hence, the Original Petition is very much maintainable. Children need the company of their grand parents. The children and the the parents of the respondent share a close bond. They were the first who saw the children when they were born, as they had come to U.S.A. The children are also very much fond of them. Her father participated in their lives daily by accompanying them when they ride their bikes and helping them with their language, reading and writing skills. The children are happy and comfortable in India. It is easier for them to forget the unpleasant past and lead a normal life. Children have neighborhood to play cricket or shuttle or badminton with them. It would be cruel to remove them from this life and they have lived isolated life in U.S.A, devoid of friends, family and community. Therefore, the respondent is taking utmost care on their children who should be given paramount consideration. Application filed by the applicant should be dismissed and the Original Petition has to be decided on merits.

6. Heard the learned counsel on either sides and perused the materials available on record.

7. Admittedly, the applicant and children are citizens of U.S.A. Soon after the marriage between the applicant and the respondent, they went to U.S.A and settled there and obtained the American citizenship also. Children were born in U.S.A. Both of them obtained American Citizenship to their children also. Now the children are also U.S.A citizens. Due to some misunderstanding, the respondent left U.S.A and is temporarily residing in Chennai and the children are with their maternal grand parents.

8. Learned counsel for the applicant vehemently contended that, since the children are citizens of U.S.A, Guardians and Wards Act would not be applicable to the citizens of foreign countries. He also placed reliance on Section 7-B of the Citizenship Act which reads as follows:

*“7B Conferment of rights on overseas citizens of India:-*

*(1) Notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India shall be entitled to such rights (other than the rights specified under the sub-section (2)] as the Central Government may, by notification in the Official Gazette, specify in this behalf*

*(2) An Overseas Citizen of India shall not be entitled to the rights conferred on a citizen of India*

*(a) under Article 16 of the Constitution with regard to equality of opportunity in matters of public employment;*

*(b) under article 58 of the Constitution for election as President.*

*© under article 66 of the Constitution for election of vice President*

*(d) under article 124 of the constitution for appointment as a Judge of the Supreme Court*

*e) under article 217 of the Constitution for appointment as a Judge of the High Court*

*(f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter.*

*(g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be:*

*(h) under sections 5, 5A and 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the legislative Assembly or a Legislative Council, as the case may be, of a State:*

*(i) for appointment to public services and posts in connection with the affairs of the Union or of any State except for appointment in such services and posts as the Central Government may be special order in that behalf specify.*

9. Though the respondent's counsel submitted that the since the children are now residing in India, ie., in Chennai, this Court has the jurisdiction. He relied on the referred judgments supra in support of his contention. Therefore, once they admitted that they are the citizens of U.S.A and that the applicant has also moved the American Court and the case is pending for disposal and also the matter is posted for trial at the end of March 2022, decisions rendered by the learned counsel for the respondent are not applicable to the present case at hand. Hence, this Application is allowed and the original petition in O.P.No.719 of 2021 is rejected. However, the respondent/mother is at liberty to work out her remedy in Case No.CK2021-14141 pending before Circuit Court of Fair Fax County, United States of America. Consequently, connected application in A.No.791 of 2022 is also closed.

Sd./- P.V.J.,  
21.03.2022

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Dated at Madras this the                      day of                      2022.

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