



O.P.No.628 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2022

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P.No.628 of 2022

S.Thabitha Dawning

... Petitioner

-VS-

S.Srigururaghavendran @ John Joel

... Respondent

(Amended as per order dated 12.12.2022 on Memo in G.W.O.P.No.628 of 2022)

PRAYER: Original Petition filed under Sections 3, 7 to 10 and 25 of the Guardians and Wards Act, 1890 and under Order XXI Rule 2 and 3 of Original Side Rules, prayed to the petitioner herein may be declared as the Sole Guardian of the person of the minor child T.Harry Mathews born on 09.02.2018 aged 4 years and grant permission custody of the minor child to the petitioner.



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O.P.No.628 of 2022

For Petitioner : Ms.B.S.Ajeetha

For Respondent : Mr.K.V.Balakrishnan

ORDER

The petition was filed by the mother of the minor child for a declaration that she is the sole guardian of the child and also seeking permanent custody. The parties arrived at a settlement and executed a settlement agreement dated 24.08.2022. Such settlement was arrived at with the assistance of a mediator. The settlement provided for the withdrawal of the unilateral divorce petition filed by the petitioner herein and for the parties to jointly file a petition for divorce by mutual consent. Learned counsel for the petitioner points out that a petition for divorce by mutual consent was filed pursuant to the settlement agreement. The parties further agreed that the petitioner shall have permanent custody and guardianship of the minor child. The respondent herein agreed to relinquish his right to custody and visitation. The petitioner agreed to relinquish her right to alimony and maintenance. The



O.P.No.628 of 2022

parties also arrived at an agreement with regard to specific assets. After drawing up the settlement agreement, the parties also recorded evidence in line with such settlement.

2. At the hearing on 12.12.2022, I directed parties to obtain fresh instructions both with regard to maintenance and visitation rights by taking into account the long term welfare of the minor child, which is the paramount consideration in this jurisdiction.

3. The respondent is present in person at today's hearing. He states that he is in financial difficulty and that he takes care of his aged mother. Therefore, he submits that he is not in a position to pay more than the sum of Rs.5000/- per month as maintenance. He also submits that he may be permitted to file an appropriate application for visitation.

4. Upon examining the settlement agreement, subject to the following modifications, there is no impediment to the disposal of the petition in terms thereof. Accordingly, O.P.No.628 of 2022 is disposed of in accordance with



O.P.No.628 of 2022

the settlement agreement dated 24.08.2022, which shall form an integral part of this order, as modified by the terms set out below:

(i) The respondent shall pay a sum of Rs.5000/- per month as maintenance to the petitioner. The above sum is fixed by taking into consideration the present financial condition of the respondent. It is open to the petitioner to file an application for enhanced maintenance if the requirements of the child warrant the same in future or on account of material change in circumstances.

(ii) Subject to the payment of maintenance as agreed to, it shall be open to the respondent to file an appropriate application for visitation rights notwithstanding the agreement recorded in the settlement agreement.

(iii) It is also open to the petitioner to file appropriate applications in respect of maintenance, visitation or any other matter relating to the welfare of the minor child.

19.12.2022

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Index : Yes / No

Internet : Yes / No



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O.P.No.628 of 2022

Petitioner's witness:

P.W.1 - Ms.S.Thabitha Dawning

Documents exhibited by the petitioners:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Photocopy my marriage invitation card. (Original is not produced. Counsel for the petitioner insisted for marking of the photocopy of this document. This document is marked subject to its admissibility, proof and relevancy)
Ex.P2	Photocopy of my marriage certificate. (Compared with the Original)
Ex.P3	Photocopy of the birth certificate of T.Harry Mathews. (Compared with the original)
Ex.P4	Photocopy of the settlement agreement dated 24.08.2022 signed by the petitioner and the respondent. (Compared with the original)
Ex.P5	Office copy of the mutual consent divorce petition filed by the petitioner and the respondent. (This document is marked subject to its admissibility, proof and relevancy)
Ex.P6	Photocopy of the School ID card of the minor T.Harry Mathews. (Compared with the original)
Ex.P7	Photocopy of my Aadhaar card. (Compared with the original)
Ex.P8	My declaration of willingness.



WEB COPY



O.P.No.628 of 2022

SENTHILKUMAR RAMAMOORTHY,J

rna

O.P.No.628 of 2022

19.12.2022