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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 07th DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

O.P. No.1079 of 2019

and

A.No.485 of 2022

In the matter of the Guardian and
Wards Act 1890 and in the matter
of Minor S.Shuayb Ali.

M.Sulaiman Ali
S/o.Mr.P.Mohamed Ali,
No.76, T-Block, Flat-T2,
8th Street, 3rd Main Road,
Anna Nagar,
Chennai-600 040.

....Petitioner/Applicant

-vs-

Ms.Ayisha Begum
D/o.Mr.M.Mohamed Ibrahim,
W/o.S.Abdul Gani,
No.141/133, East South Street,
Labbaikudikadu,
Kunnam Taluk,
Perambalur District-621 108,

And also Resides at 31,
Subramania Colony,
Thiruvannamiyur,
Chennai-600 041

.... Respondent /Respondent

**O.P. No.1079 of 2019**

Original Petition praying that this Hon'ble Court be pleased to

a) Grant permanent custody of the minor child S.Shuayb Ali to the petitioner.

b) Direct the Respondent to pay cost of this petition.

A.No.485 of 2022

Application praying that this Hon'ble Court be pleased to grant interim custody of my minor child S.Shuayb Ali to the Applicant/Petitioner pending disposal of the main Original Petition.

This Original Petition along with the Application coming on this day before this court for hearing in the presence of Mr.A.Sheik Peer, advocate for the petitioner in O.P.No.1079 of 2019 and for the applicant in A.No.485 of 2022 and Mr.M.Nambiraj, Advocate for the Respondent in O.P.No.1079 of 2019 and A.No.485 of 2022 and upon reading the Petition and the Affidavit of M.Sulaiman Ali and the Counter Affidavit of Ayisha Begum filed in O.P.No.1079 of 2019 and the Judges Summons and the Affidavit of M.Sulaiman Ali filed in A.No.485 of 2022,



it is ordered as follows :-

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That M.Sulaiman Ali, the petitioner herein be and is hereby granted permanent custody of the minor child S.Shuayb Ali.

2. That the respondent/mother herein be and is hereby directed to hand over the custody of the minor child to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

3. That the A.No.485 of 2022 do stand closed.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 07th DAY OF APRIL 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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O.P. No.1079 of 2019
and
A.No.485 of 2022

ORDER:-

DATED: 07.04.2022

THE HON'BLE MR. JUSTICE
P.VELMURUGAN

FOR APPROVAL: 02.06.2022

APPROVED ON : 06.6.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 07th DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

O.P. No.1079 of 2019

and

A.No.485 of 2022

In the matter of the Guardian and
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**O.P. No.1079 of 2019**

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Original Petition praying that this Hon'ble Court be pleased to

a) Grant permanent custody of the minor child S.Shuayb Ali to the petitioner.

b) Direct the Respondent to pay cost of this petition.

A.No.485 of 2022

Application praying that this Hon'ble Court be pleased to grant interim custody of my minor child S.Shuayb Ali to the Applicant/Petitioner pending disposal of the main Original Petition.

This Original Petition along with the Application coming on this day before this Court for hearing the Court made the following order:-

This Original petition has been filed under Section 25 of the Guardians and Wards Act 1890 and under Order XXI Rule 2 and 3 of the Original Side Rules for grant of permanent custody of the minor child S.Shuayb Ali to the petitioner and also for the cost of the petition.

2 The case of the petitioner is that the petitioner is father and the respondent is mother of the minor child S.Shuayb Ali. The marriage between the petitioner and the respondent was solemnized on 31.07.2016 at

Laity Auditorium, Bain School Complex, Kilpauk, Chennai in accordance

with Islamic custom, rites and rituals and the marriage was duly registered



with the Office of the Chief Kazi, Government of Tamil Nadu, Royapettah, Chennai-14. Thereafter, they set up their matrimonial home at Anna Nagar, Chennai. From the beginning itself, the respondent was not interested in the matrimonial life with the petitioner for the reasons best known to her and she did not have any cordial relationship with the petitioner and his parents and that was the reason that the respondent did not cooperate with the petitioner to register their marriage with Registrar of Marriages, under the Tamil Nadu Registration of Marriages Act, 2009. In the due course, the respondent left to her parent's house at Labbaikudikadu on 09.11.2016 and refused to return for about one year. While so, out of wedlock, a male child was born to the respondent on 03.06.2017 and without consultation with the petitioner, the respondent unilaterally named the child as S.Mohamed Ruhan and thereafter, the petitioner changed his son's name with the help of the respondent's father as S.Shuayb Ali and necessary name change was duly effected and published in the Tamil Nadu Government Gazette. Even after the birth of the child, the respondent was reluctant to return to the matrimonial home and the respondent and her parents not even allowed the petitioner to see his child or to spend time with the child whenever he made visits to the respondent's place. Thereafter, when the differences of opinion between the petitioner and the respondent arose at maximum level, the



Mosques, Labbaikudikadu, Kunnam, Taluk, Perambalur District and sought for matrimonial separation by way of Khula under the Shariat Law.

Subsequently, on 30.12.2018, the administrative committee members of East & West Jumma Mosques, Labbaikudikadu, enquired both respondent and the petitioner and also their family members and tried to solve the disputes amicably. But all their efforts of conciliation ended in failure as the respondent was much adamant on her decision. Hence, the Jamath accepted the respondent's request and in their presence, Khula under Shariat Law, was taken place on 26.01.2019. The terms and conditions of Khula was reduced in writing and both the petitioner and the respondent signed the deed of divorce and both Jamath members also put their signatures and thereby, dissolved the marriage between the petitioner and the respondent. As per the divorce deed, the respondent has to observe the period of "Iddat" as mandated under Shariat Law for a period of 3 months i.e. 3 menstrual cycling period commencing from 26.01.2019 and the petitioner paid Iddat period maintenance of Rs.7,500/- by way of cash on the same day. The relevant conditions imposed in the said divorce deed are as follows:

- Even if the respondent gets remarried, the minor child shall be allowed to be with the custody of the respondent till he completes the age of 2 ½ years and thereafter, the custody has to be handed over to the petitioner.



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- Before the child attains the age of 2 ½ years, if the respondent gets remarried and about to leave abroad, the custody of the minor child has to be handed over to the petitioner.
- If the respondent does not get remarried, the custody of the minor child has to be handed over to the petitioner after the child attains the age of 7 years.
- the petitioner shall pay a sum of Rs.3,000/- per month towards the maintenance of the minor child to be deposited in the respondent's bank account;
- Both the petitioner and the respondent are having visitation rights of the minor child through any mediators

3 As agreed, the petitioner fully complied with the terms and conditions stipulated in the divorce deed dated 26.01.2019. However, in the meantime, when the petitioner made efforts to see his son, he was not allowed by the respondent and her family members. Thereafter, the petitioner came to know, that in contravention of Shariat Law, before completion of Iddat period, the respondent underwent second marriage with a colleague of one of her brothers, who is working in Dubai on 14.03.2019.

Upon hearing the news, the petitioner made a petition dated 17.03.2019 to the Jamaths, in whose presence the Khula was taken place. The committee



members of the East & West Jumma Mosque, Labbaikudikadu, called the respondent's parents on the same day and they accepted the fact of solemnization of the respondent's second marriage with the person working in Dubai stating as they got a suitable alliance for their daughter and thereby, they ignored the observation period of Iddat as mandated by the Shariat Law. When the Jamath insisted the respondent's parents to handover the custody of the child to the petitioner, the family members of the respondent vehemently denied the same and the Jamath Committee has issued a report dated 06.03.2019 mentioning the factual aspects. The petitioner was informed that the second marriage of the respondent was taken place at Chennai and after the second marriage, the respondent is living in her second husband's house at Chennai keeping the petitioner's son with her illegally. Further, the petitioner had been given to understand that the respondent was planning to join with her second husband who is working in Dubai and while leaving India, she also planned to take away the petitioner's son with her. Hence, in order to prevent the minor child leaving India without his permission, the petitioner sent a representation dated 12.04.2019 to the Regional Passport Officer, Chennai, objecting to issue passport to his minor son. Since the respondent undergone second marriage, she has lost the right/authority to have the custody of the child born through her first husband i.e. the petitioner herein after the child completes the age



of 2 ½ years and she has absolutely no right to take the minor child to abroad. Hence, the petitioner caused a legal notice dated 12.04.2019 to the respondent to entrust the custody of the minor child “ S.Shuayb Ali” formerly known as “S.Mohamed Ruhan” to the petitioner within 7 days of receipt of the legal notice and the notice was also duly served. However, there was no response from the respondent. The petitioner tried all his best efforts through his known source to see his minor child but all his efforts had futile effects. In such circumstances, when the whereabouts of the minor child was not known, the petitioner got afraid about the life of his minor son and hence, he lodged a complaint with the Inspector of Police, Mangalamedu Police station, Perambalur District on 31.08.2019 to trace out his missing child. During the police enquiry, the petitioner was given with an information that the respondent’s second marriage was registered with the Office of the Sub Registrar, Triplicane, Chennai on 05.04.2019 as Serial No.42 of Register of Marriages, maintained thereon and able to find out the respondent’s Chennai address. The petitioner also came to know that the respondent by suppressing the change of name of the minor child, furnished false particulars to the passport authorities and obtained passport to the minor child in the name of “Mohamed Ruhan” which amounts to cheating the public authority. The respondent in order to keep away the minor child permanently from the petitioner, did all such criminal activities. Therefore



the welfare of the minor child has to be entrusted with the custody of the petitioner and any further continuance of the custody with the respondent will very much affect the welfare of the minor child. As per the Mohammedan Law, the father of the child is the legal guardian and even though, the custody of the minor child has to be with the mother till certain age of the minor child, in this case, the respondent has lost her right to have the custody beyond the age of 2 ½ years as she already remarried and settled in abroad with her second husband. Therefore, the present petition has been filed for permanent custody and guardianship of the minor child.

4 The respondent by filing counter denied all the allegations levelled against her. The respondent has stated that admittedly the marriage between her and the petitioner took place on 31.07.2016 and after few days of marriage, she came to know that the petitioner was already having illicit relationship with a widow by name Sherin. The petitioner did not show any real love and affection towards the respondent. Therefore, the respondent underwent untold mental agony that cannot be expressed in terms of words. The petitioner's parents also know very well that even before the marriage the petitioner was having illicit relationship with the said Sherin. But suppressing all those facts, the petitioner married the respondent and his parents were also hand in glove with the petitioner. When the respondent questioned the illicit relationship, the petitioner and his parents treated the



respondent with cruelty and acted indifferently towards her. In the meantime, the respondent got pregnant. Since the petitioner and his parents did not treat the respondent well in the matrimonial home, the respondent was forced to come out of the matrimonial home by their conducts and went to her parents' home at Labbaikukdikadu and informed everything to her parents and family members. Immediately, the parents and the relatives of the respondent went and enquired about the illicit relationship. But the petitioner and his parents denied the same as false and thereby refused to correct their conducts. Further, after given birth to a male child, the respondent's father intimated the same to the petitioner's family but none of their family members turned to see the child at Trichy Hospital where the child was born. In fact on 12.04.2019, the petitioner had issued a notice through an Advocate and immediately a reply notice dated 20.04.2019 was sent. But the same was returned as unserved. Again in the year 2019, since the petitioner preferred a police complaint before the Mangalamedu Police Station, she gave a reply through a counsel dated 02.10.2019 to both Inspector of Police, Mangalamedu and the petitioner. While issuing that notice dated 02.10.2019, a copy of the earlier reply notice dated 20.04.2019 was also enclosed with that. But suppressing all those facts, the petitioner has come forward with this petition with full of false allegations and having



be dismissed. It is pertinent to note that the respondent obtained dissolution of marriage by means of Khula on 26.01.2019 and after that, there is no relationship of husband and wife between the respondent and the petitioner. It is lawful for the petitioner to pay maintenance to his child. But after the marriage of the respondent with the said Abdul Gani, the petitioner has not spent even a single pie towards his son. Further the petitioner has not given any maintenance during Iddat period either to the respondent or for his child and the statement of the petitioner that he paid maintenance during Iddat period for the child is absolutely false and the petitioner has filed this petition with ulterior motive. Even otherwise, any agreement in violation of Shariat, is void and the alleged agreement is unenforceable in the Court of Law. Even during the Jamath meeting at Labbaikudikadu, the petitioner did not turn up and only his father and sister had turned up. Only out of compulsion and compelling circumstances, the respondent not agreed on her own volition to give the child to the petitioner. Hence, the agreement is not binding upon the respondent with regard to the child clause and the respondent agrees only the dissolution of marriage. Further, immediately after the birth of the child on 03.06.2017, the petitioner claimed himself as a Divorcee and solicited a bride in the matrimony column and such was the conduct of the petitioner and he attempted to marry another girl during the subsistence of the marriage. In fact, the petitioner has got married the above



said Sherin after Khula in the year 2019 and given birth to a male child. The petitioner has no locus-standi to claim the custody of the child as the minor's welfare is the only paramount. Even as per Shariat Law, the male child till the age of seven must be under the care of the mother. Since the petitioner has married another woman, it is not fair enough to give the custody of the child to him as one cannot expect a good treatment from the step mother. Moreover, a mother is the best care person for her child even though she gets second marriage. Hence, prayed for dismissal of this petition.

5 After completing the pleadings, in order to substantiate the case of the petitioner, the petitioner himself was examined as P.W.1 and marked 13 documents as Exs.P.1 to P13 and no further witness was examined.

6 On the side of the respondent, the respondent was examined as R.W.1 and no document was marked.

7 The petitioner is father and the respondent is the mother of the minor child. The marriage between the petitioner and the respondent is not in dispute. The paternity of the child is also not in dispute. Due to some misunderstanding, the petitioner/father and the respondent/mother got separated and before the Jamath namely, East & West Jumma Mosques, Labbaikudikadu, Kunnam, Taluk, Perambalur District, the marriage between the parties was dissolved and they also entered into an agreement.



At the time of dissolution, the age of the child was 1½ years and some of the conditions in the agreement were that, even if the respondent gets remarried, the minor child shall be allowed to be with the custody of the respondent till he completes the age of 2 ½ years and thereafter, the custody has to be handed over to the petitioner; Before the child attains the age of 2½ years, if the respondent gets remarried and about to leave abroad, the custody of the minor child has to be handed over to the petitioner; If the respondent does not get remarried, the custody of the minor child has to be handed over to the petitioner after the child attains the age of 7 years.

8 In this case, admittedly the respondent/mother has got second marriage and left to abroad even prior to the child completing the age of 2½ years. Further, the respondent /mother admitted the signature in the agreement. However, she states that out of compelling circumstances as she wanted to revoke the marriage, she signed in it. But, once, the respondent / mother not denied the signature found in the agreement and accepted that she has got second marriage and settled in Dubai, as per the agreement, she has to handover the custody to the petitioner/father. Further, without intimating the petitioner/father, the respondent/mother has changed the name of the child and got a certificate in a new name and taken away the child to abroad.



and the mother is entitled to have the custody of the child till the child attains the age of 7 years in case of the child is being a male. If the child is a female, till she attains puberty, the mother is entitled to have the custody. Whereas, in this case, the child is a male and the respondent/mother had agreed to handover the custody of the child once he completes the age of 2½ years, if she gets second marriage or before the age of 2½ years, if she gets second marriage and about to leave to abroad. Admittedly, now the respondent/mother has got second marriage before the child attains the age of 2 ½ years and settled in Dubai. Further, the second husband of the respondent/mother is also a married man and got two children through his first wife. Now both the children are with the second husband of the respondent/mother. That being the case, one cannot expect the second husband to take care of the child born through the first husband. Once the respondent/mother got second marriage and settled in Dubai, there is no reason to deny for handing over the custody of the child to the petitioner/father.

10 The respondent/mother has not established that the petitioner/father is acting against the interest and welfare of the child whereas, the petitioner/father has established that the respondent/mother is acting against the terms of the agreement and also taken away the custody of the minor from the petitioner/father to abroad and settled along with her



second husband who is already a married man and got 2 children. Since the respondent/mother left to abroad, the petitioner/father's visitation right also deprived of.

11 Considering the facts and circumstances of the case and a perusal of the oral and documentary evidences, this Court is of the opinion that the petitioner/father is a better person to be a guardian for the minor child and the respondent may not be a better person for the interest and welfare of the minor. Therefore, the petitioner is entitled for the relief sought for in this petition.

12 Accordingly this Original Petition is allowed. The respondent mother is directed to hand over the custody of the minor child to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Consequently connected application is closed.

Sd./-P.V.J
07.04.2022

List of witness examined on the side of the petitioner;

M.Sulaiman Ali – P.W.1

List of documents marked through the petitioner;

Exhibits	Nature of the documents
P1	PW1's Original Marriage certificate
P2	The photocopy of the birth certificate S.Mohamed Ruhan
P3	The original Gazette publication dated 23.08.2017
P4	The Original Deed of Divorce dated 26.01.2019 between



Exhibits	Nature of the documents
	P.W.1 and the respondent.
P5	The original report dated 06.03.2019 issued by Mosque Committee.
P6	The office copy of the legal notice dated 12.04.2019 sent by P.W.1 to the respondent along with the acknowledgement card
P7	The office copy of the letter of objection dated 12.04.2019 submitted by P.W.1 to the Regional Passport Officer, Chennai.
P8	The copy of the police complaint dated 31.08.2019 lodged by P.W.1 before the Police Station, Mangalamedu, Perambalur.
P9	The original C.S.R. bearing No.320 of 2019 dated 06.10.2019
P10	The original legal notice dated 02.10.2019 sent by the respondent's father to P.W.1 and the Inspector of Police, Managalamedu Police Station, Perambalur.
P11	The copy of the complaint dated 11.11.2019 given by P.W.1 to the Regional Passport Officer, Thiruchirapalli.
P12	The photocopy of P.W.1's office ID card.
P13	The original Marriage Certificate of the respondent with Mr.S.Abdul Gani dated 05.04.2019

List of witness examined on the side of the respondent;

Ayisha Begum – R.W.1

List of documents marked through the respondent: Nil.

Sd./-P.V.J
07.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)