



O.P.No.31 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.07.2023
Pronounced on	28.08.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

O.P.No.31 of 2022 and
A.No.1730 of 2022

1.M.Vijayakumar

... Petitioner

Vs.

1.S.Mani

2.Mrs.Premavathi

3.M.Saravanan

4.S.Sakthi Priyadharshini

... Respondents

Prayer: Petition filed under Section 25 of Guardian and Wards Act, 1890 r/w. Order XXI Rule 2 & 3 of O.S.Rules, to grant permanent custody of the minor child V.Sai Varun to the petitioner.

For Petitioner : Mr.Manoj Sreevatsan

For Respondents : Mr.R.Vinayagamoorthy



O.P.No.31 of 2022

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ORDER

This Original Petition has been filed by the petitioner / father seeking permanent custody of the minor child V.Sai Varun to the petitioner.

The brief facts of the case are as follows:

2. The petitioner is the father of the minor child Sai Varun who is five years old. The petitioner married one Shanthi who is the daughter of the respondents 1 and 2, on 30.06.2017. The minor child Sai Varun was born on 15.03.2018 for the couple out of their wedlock. Even prior to the marriage, Shanthi had cardiac ailments, but that had not been revealed to the petitioner. Only during the delivery of the child, the petitioner came to know about the complications of her health, especially her cardiac issues. Shortly before her death, Shanthi had gone to her parents' house because both of her parents were sick and they were hospitalized at Billroth Hospital. During that time, she was doing daily household chores there and hence her health got affected. Due to Covid - 19 lockdown, the wife of the petitioner continued to stay in her parents' house. His efforts to bring her to the



O.P.No.31 of 2022

matrimonial home did not fructify. Shanthi got cardiac arrest in her parents' house and died on 29.10.2021 leaving behind the petitioner and her child Sai Varun who is just 3 years old at that time. At present, the minor child is at the custody of the respondents 1 and 2. The respondents 1 and 2 are the maternal grand parents of the child. The third respondent is the maternal uncle of the child and the fourth respondent is his wife.

2.1. The petitioner was prevented to take the child along with him and he was not allowed to see his minor child. The petitioner is not able to talk to the child through phone or E-mail. The petitioner is working in Bangalore and he is earning Rs.71,000/- as monthly salary and he is having a house of his own. He also has got other sources of income by conducting tuitions. The petitioner longs to live with the minor child. The petitioner has got savings also in the name of the minor child. He is capable of maintaining his child. The child is already motherless, now the respondents are making him fatherless as well. The child should not be deprived of father's love and affection.



O.P.No.31 of 2022

2.2. The petitioner came to know that the minor child is not properly maintained by the respondents. The petitioner was not allowed to attend the tooth decay issue of minor son for the past 6 months. If the child is left with the petitioner, he would admit him in a good school and provide him a good education. Apart from studies, the petitioner is able to develop his extra curricular activities also. Lastly the petitioner seen his son only on 10.11.2021. The petitioner does not have any idea of another marriage as he is concerned with his son. The third respondent who is the maternal uncle of the child got married and got his own child. So it is not possible for them to take care of the petitioner's child. Hence, the petitioner has filed this Original Petition seeking permanent custody of the minor child Sai Varun.

3. It is submitted by the learned counsel for the petitioner that the petitioner who is the father of the child is the natural guardian and he has good employment and in which, he derives some decent salary. The respondents 1 and 2 without revealing the health issues of their daughter Shanthi, got her married to the petitioner and later she died in the house of the respondents 1 and 2. The child has attained five years now and he is not



O.P.No.31 of 2022

handed over to the custody of the father. The child's future will be affected and that will not be in the best interest of the child. The respondents 1 and 2 who are the grandparents of the minor child are senior citizens. The third respondent who is the maternal uncle got married and established his own family. Hence it is appropriate to hand over the custody of the minor child to the father who is the petitioner herein.

4. The learned counsel for the respondents submitted that the petitioner was clearly appraised about the health issues of Shanthi before marriage itself. The petitioner and his mother tortured Shanthi without giving her proper and timely food and medicines. The petitioner and his mother grabbed the jewels of Shanthi and they had the same in their custody. The petitioner is the cause for Shanthi's death. The petitioner disappeared immediately after the death of Shanthi. He did not even come to the graveyard. The child continued to be under the custody of the respondents who are taking care of him. The petitioner has no one with him to take care of the child. At any time, the petitioner can re-marry and that would affect the interest of the child. The child is bonded with the



O.P.No.31 of 2022

respondents and hence, the custody of the child should not be granted to the petitioner.

5. The learned counsel for the respondents further submitted that the child is bonded to the grand parents. The third respondent has got married and got child. The minor child Sai Varun is comfortable with the company of his baby cousin and he is being taken care of by the respondents and his performance in the School is also meritorious. Disturbing the child at this age would affect him emotionally and that will not be in the best interest of the child. Even if the custody is handed over to the petitioner, the petitioner is not available all the time to take care of the child and he would either marry an another person or appoint a servant to take care of the child. The respondents never denied the visitation rights to the petitioner and the petitioner can very well visit the child and develop relationship with him.

Discussion:

6. During the course of the trial, the petitioner was examined as P.W.1 and Exhibits P1 to P9 were marked. On the side of the respondents,



O.P.No.31 of 2022

the first respondent was examined as R.W.1 and Exhibits R1 to R8 were marked.

7. The relationship between the parties is not in dispute. The fact that the minor child Sai Varun is presently under the custody of the respondents 1 and 2 is not denied. The respondents 1 and 2 are the parents of the minor child's mother Shanthi. The third respondent is the maternal uncle of the minor child. The fourth respondent is the wife of the third respondent. The respondents live as a joint family. The mother of the minor child Shanthi suffered from some health issues and unfortunately she had a pre-matured death at the residence of the respondents.

8. According to the petitioner, the respondents 1 and 2 had suppressed the health condition of Shanthi and got her married to him. It is claimed by the respondents 1 and 2 that the petitioner was completely appraised the health condition of Shanthi and only after knowing that, he married her. The parties are making mutual allegations about the background in which Shanthi died. All these matters cannot be the matter



O.P.No.31 of 2022

for consideration in the Petition filed for seeking custody of the minor child.

Moreover, the petitioner being the father of the minor child, has got every right to enjoy the company of the minor child. In fact, the father has got the duty to maintain the child and to educate him in a good school and groom him in a way that the child is self reliant at some point of time. Irrespective of the reasons behind the death of Shanthi, the minor child's interest has to be appreciated.

9. The child was in the custody of his parents before his mother came to Chennai to visit her parents. Unfortunately, she died during that time. Subsequent to the demise of Shanthi, the child was taken care of by the grandparents who are the respondents 1 and 2. To the knowledge of the child, the respondents 1 and 2 are his parents. The child would have got comfortable with the respondents and he has a playmate also who is the child of the third respondent. If the custody of the child is given all of a sudden to the petitioner, that would surprise him. Now the child is studying in a good school and his performances are seen to be good as per the School records.



O.P.No.31 of 2022

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10. There is no doubt that the father is well placed and has a good employment. Though the respondents 1 and 2 are old and they lost their own daughter, the petitioner cannot be blamed for whatever happened. It involves emotions of the persons involved. As stated already, the child would have accepted the environment of his grand parents' place and found it convenient. Uprooting the child all of a sudden and handing over to the petitioner who is in Bangalore will grossly disturb the equilibrium. Even though the petitioner has stated that he has got no idea about remarriage, it cannot be assured that it will not happen for him forever. It is equally so for the respondents 1 and 2 also as they had also grown old.

11. Since the 1st respondent is a retired Government Servant and the 2nd respondent is a School Teacher, they are financially good to take care of the child. The respondents 1 and 2 do not have any other child other than the 3rd respondent and the 3rd respondent also got married. The father's best interest for the child cannot be denied and his emotions and love towards the child cannot be secondary to that of the respondents.



O.P.No.31 of 2022

However, the petitioner cannot take care of the child as conveniently as the respondents who had retired from service.

12. The petitioner has stated that he would take the help of his sister to take care of the child during his absence. If the child is not going to be taken care of by either of the parents, it is better to leave the child to live with his grand parents with whom he got already accommodated and comfortable. It would have been a better arrangement to grant the custody of the child between the petitioner and the respondents if both of them are living in one place. Since the petitioner is working in Bangalore and the respondents are in Chennai, such an arrangement will not workout. So I feel in the best interest of the child, the child has to be allowed to be in the custody of the respondents. However the petitioner can establish contacts with the child whenever he wants to interact either through phone or coming in person once in a month or through virtual mode. The respondents without making the petitioner to wait at the door steps, should accommodate the petitioner by realising his involvement also in the well being of the child.



O.P.No.31 of 2022

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13. With these observations, the Original Petition is disposed. No costs. Consequently, connected application is closed.

28.08.2023

Index : Yes / No
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O.P.No.31 of 2022

R.N.MANJULA,J.
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O.P.No.31 of 2022 and
A.No.1730 of 2022

28.08.2023