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O.P. No.547 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.07.2024
Pronounced on	31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.P. No.547 of 2021

P.Ramjan Oli

... Petitioner

Vs.

S.S.A.Khadija

... Respondent

PRAYER: Original Petition filed under Sections 3, 7 to 10 of the Guardians and Wards Act, 1890 read with Order XXI Rule 2 & 3 of O.S. Rules, to declare the petitioner as permanent guardian of the person of the minor child, Muhammed Rayan A.

For Petitioner : Mr.Ramesh Srinivasan

For Respondent : Mr.K.C.Karl Marx

ORDER

The petition has been filed by the step father of the minor child, Muhamed Rayan A, born on 28.03.2011 seeking to declare him as permanent guardian of the minor child.



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2. In the petition filed, it had been stated that the petitioner had married Shameena Banu on 03.09.2018. The marriage certificate had also been issued by the Tamil Nadu Thowheed Jamaath. It had been further stated that Shameena Banu had earlier married N.Abuthageer and out of the wedlock, a male child, A.Muhammed Rayan was born on 28.03.2011. Thereafter, N.Abuthageer died on 27.10.2012. The petitioner further stated that after marrying him, Shameena Banu delivered two children on 14.06.2020, namely R.Muhammed Rizwan and R.Raihana. But unfortunately, Shameena Banu contracted Covid-19 and died on 22.06.2020. The petitioner is now taking care of his three children, the two twins and another minor child, for whom, he is the step father. The respondent, S.S.A.Khadija is the paternal grandmother of the minor child. The petitioner stated that the respondent is aged about 60 years and is not in proper health condition to take care of the child. On the other hand, he stated that he has good earning capacity and educational qualifications and is fit to take care of the child. It is under those circumstances that this petition has been filed seeking to appoint him as a guardian of the minor child, Muhammed Rayan A.



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3. A counter had been filed by the respondent wherein she had stated that she had been taking care of the minor child since his birth and therefore, seeks to declare herself as the guardian. She stated that her daughter, Shameena Banu was married to N.Abuthageer on 20.06.2010 and the child Muhammed Rayan A was born on 28.03.2011. N.Abuthageer died on 27.10.2012. Thereafter, her daughter, Shameena Banu and the child were in the custody of the respondent. N.Abuthageer was working in Southern Railways and after his death, Shameena Banu got employment on compassionate ground in the year 2016. Shameena Banu then married the petitioner, P.Ramjan Oli on 03.09.2018.

4. It had been further stated in the counter that the petitioner had the habit of consuming alcohol and used to ill treat her daughter. It had been further stated that her daughter gave birth to twin children on 14.06.2022. Her daughter then suffered from Covid-19 and died on 22.06.2020. It had been stated that she and her grandson were not allowed in the house of the petitioner, when they went for the customary Fathia on the 40th day. The petitioner gave a bureau and a cot to the minor son. The child had been living with the respondent ever since. She claimed that she is in good health and has capacity to take care of the grandson. It had been stated that the



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child has been studying in Salem and was never in the custody of the petitioner. It had also been stated that the child is entitled for the pension of his biological father and also part of the pension of his mother, but the petitioner is holding the pension passbook and refusing to return the same. It had also been stated that the petitioner is also refusing to return the Community Certificate and LIC bond in which the child is a nominee. It had been contended that the petitioner has intention of getting employment in the Railways on compassionate grounds. It had been stated that the petition has been filed only for that purpose and not out of any love or affection for the child. It had therefore been stated that the petition should be dismissed and that she should be appointed as the guardian of the child.

5. The points to be determined are:

- (i) Whether the petitioner is entitled to be appointed as the guardian of the minor child, Muhammed Rayan A ?
- (ii) Whether the respondent could be appointed as the guardian of the minor child?

6. The parties were directed to tender evidence.



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7.The petitioner P.Ramjan Oli examined himself as P.W.1. He marked

9 documents as Exs.P1 to P9. Ex.P1 is the Birth Certificate of the minor child, Ex.P2 is the Death Certificate of Abudhageer, Ex.P3 is the Marriage Certificate between the petitioner and Shameena Banu, Ex.P4 is the Death Certificate of Shameena Banu, Ex.P5 is the Legal Heirship Certificate of Shameena Banu and Ex.P8 is the certified copy of the registered Sale Deed dated 19.12.2019.

8.The respondent examined herself as R.W.1. She marked 4 documents as Exs.R1 to R4. Ex.R4 is the School Identity Card of the minor A.Muhammed Rayan. The respondent also examined her son, Syed Feroz as R.W.2. He marked his Aadhar Card as Ex.R5.

9. All the three witnesses were also cross examined.

10. Heard arguments advanced by Mr.Ramesh Srinivasan, learned counsel for the petitioner and Mr.K.C.Karl Marx, learned counsel for the respondent.



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11.Mr.Ramesh Srinivasan, learned counsel for the petitioner stated that the petitioner, as a step father of the minor child, was qualified to be appointed as the guardian of the child. He stated that the mother of the child had been earlier married to one Abudhageer who died and later, she had married the petitioner. Through her marriage with Abudhageer, the minor child had been born. The learned counsel stated that after her marriage with the petitioner, the child has been living with the petitioner. It is contended that thereafter, twins were also born and they are also in the custody of the petitioner. It was also stated that the respondent is an aged lady nearly about 65 years and has several health issues. It was also stated that she has two daughters and one son and she is residing with one of the daughters in Salem. It is contended by the learned counsel that one of the daughters had been given in adoption and that she also has two children and is also a widow and working in an Anganwadi Centre. The learned counsel also stated that the son is living in a rental house at Chennai and has three daughters and one son and they are studying in Velammal School and that he is living an extravagant life.

12.The learned counsel therefore stated that it would only be appropriate that the petitioner is appointed as guardian of the minor child,



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since the petitioner has good educational qualification and would also be able to take care of the child. It is also stated that the petitioner is also taking care of the twin children, who were born to the petitioner and Shameena Banu. It is therefore contended that the petition should be allowed and the petitioner should be appointed as guardian of the minor child.

13.Mr.K.C.Karl Marx, learned counsel for the respondent however contested the statements made by the learned counsel for the petitioner. The learned counsel stated that the respondent, being the paternal grandmother is a natural guardian of the child since both the parents have died. It had also been contended that the respondent had been taking care of the child ever since the death of her daughter/mother of the child. The child is now studying in 9th standard and is aged about 13 years. It had also been stated that the Court will also have to consider the conduct of the person to seeks guardianship of the child. The learned counsel stated that under Section 17(3) of the Guardian and Wards Act, there should be some application of mind before preferring a person to be the guardian of the child and the wishes of the child should also be taken into consideration. The learned counsel stated that the only intention of the petitioner is to get an



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employment in the Railways since Shameena Banu was working in the Railways. She herself has been appointed only on compassionate basis. Abudhageer was originally employed and on his death, she got employment. The learned counsel stated that the intentions of the petitioner are suspicious and therefore, stated that the petition should be dismissed and the respondent should be recognized as a guardian of the minor child.

14. I have carefully considered the arguments advanced and perused the relevant records.

15. Point Nos.1 and 2

The petitioner P.Ramjan Oli is the step father of the minor child, Muhammed Rayan.A. The child was born to Shameena Banu and Abudhageer. The respondent is the mother of Shameena Banu. The child was born on 28.03.2011. Abudhageer who was employed in Southern Railways, died on 27.10.2012. After his death, Shameena Banu got employment in Southern Railways on compassionate basis. She then married the petitioner on 03.09.2018. They had two children, twins, a boy and a girl, born on 14.06.2020. Unfortunately, Shameena Banu contracted Covid-19 and she died on 22.06.2020.



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16. There are differing versions given namely that the minor child has been under the custody of the petitioner and also that he is under the custody of the respondent. But however, from Ex.R4, the School Identity Card of the minor child, it is seen that he is studying in a School at Salem and he is residing with the respondent/ paternal grandmother. The petitioner during his cross examination, stated that he had married earlier and has a girl child through his first wife who obtained divorce from him. That child is now living with her. He also stated that A.Muhammed Rayan was under the care of the respondent/ his grandmother. He denied that he had filed an application to receive either pension from the Railways or compassionate appointment in the Railways.

17. During the cross examination of the respondent, she stated that she did not have the financial capacity to maintain two daughters and one son and she had given her first daughter in adoption in the year 1986. She also stated that the child would also be taken care by her daughter. She accepted that she is a diabetic patient and that she has no other health issue.



18.The son of the respondent was also examined as R.W.2 and during his cross examination, he stated that his three daughters and a son are studying in Velammal Matriculation School and that the approximate school fees per child is about Rs.50,000/- per annum. He also stated that his sister's son is also staying with him. He also stated that the documents relating to the Southern Railways and LIC were held back by the petitioner.

19.Section 17 of the Guardian and Wards Act, 1890 is as follows:

“17(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) Omitted by Act 3 of 1951.



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(5) The Court shall not appoint and declare any person to be a guardian against his will.”

20.It is incumbent on the Court to come to a considered decision to determine who should be appointed as a guardian of the minor child. In the instant case, the petitioner is a step father of the minor child. It is clear from the evidence which has been recorded that after the death of the mother of the minor child, the child had been living with the respondent at Salem. He is also studying in Salem. The petitioner had married earlier and has a daughter through the first marriage. He then married the mother of the minor child and two twins, a daughter and a son were born to him. They are under his custody now. The petitioner is residing with his mother. The respondent is looking after the child right from the date of the death of her daughter. The child is now 13 years old. During the evidence of R.W.2, it had come to light that the petitioner visited the child just once in the interregnum period. The child has now become accustomed to the surroundings where the grandmother is residing / Salem. He is now studying in 9th standard. It would never be to his advantage, if at that crucial age and class, he is to be shifted to another School or to another District.



21. The child, the petitioner and the respondent had also come over to the Chambers. I had an interaction with the child. He expressed clear intention to be with the respondent and to continue to be with the respondent. He feels extremely confident in the residence of the respondent. The welfare of a child would also include not only the financial welfare but more importantly the mental health of the child. At his age, the child is in a position to question views expressed by others, to challenge such views and to express views for himself. It would only be prudent that he is not further agitated in any manner by shifting his residence or school. As on date, he is extremely comfortable with the school where he is studying and with the house where he is residing with his grandmother. The evidence of the petitioner shows that he also has an extended family to look after. It is to be much appreciated that he is taking care of the twin children born to him through the daughter of the respondent. That responsibility is already with him. Though there are allegations that the respondent is not keeping good health, she asserted that her health is good and that she only suffers from diabetics.

22. Every family will have to work out in their individual ways so far as their financial circumstances are concerned. No two families can be



compared in that aspect. The source from which the income of the family is received and the budgeting of such income for the expenses and the savings made from the said income are decisions taken by each family and such decision differs from family to family. The Court cannot expect that every guardian whom the Court appoints must be extremely financially well off. They should be in a position to provide for the basic need of the minor child and also give him or her proper education.

23. Viewed from this angle, particularly taking into consideration the fact that the child is at very crucial age in his life where any wrong decision thrust on him would only make him take a path which would be disadvantageous to him in later life, I would maintain status quo so far as his position as on date is concerned and permit him to continue to reside with the respondent. She has been taking care of him practically right from his birth and he is quite comfortable in her presence and in the school where he is studying. He expressed interests in extra curricular activities and therefore, to nurture those dreams, it would only be appropriate that he continues to reside at Salem and study at Salem, under the care and protection of the respondent.



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24.In view of the reasons stated, I would answer point No.1 that the petitioner is not entitled to be appointed as guardian of the minor child and I would answer Point No.2 that the child should continue to reside with the respondent and that the respondent should be appointed as guardian of the minor child A.Muhammed Rayan, till he attains the age of 18 years.

25.The petitioner is of course permitted to visit the child whenever it is comfortable for him.

26.A direction is also issued to the petitioner to return back the original certificates and documents either of the child or of his mother to the respondent forthwith.

27.Observing as above, the Original Petition stands dismissed.

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Index :Yes/No
Internet:Yes/No
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APPENDIX

Petitioner's witness:

P.W.1 – Mr.P.Ramjan Oli

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
P1	The computer generated birth certificate of minor A.Muhammed Rayan
P2	The computer generated death certificate of N.Abuthageer.
P3	The photocopy of the marriage certificate of the petitioner dated 03.09.2018. (compared with the original)
P4	The computer generated death certificate of Shameena Banu.
P5	The computer generated Legal Heirship Certificate of A.Shameena Banu.
P6	The photocopy of the Aadhar card of the petitioner (compared with the original)
P7	The photocopy of the PAN card of the petitioner (compared with the original)
P8	The certified copy of the registered Sale Deed dated 19.12.2019 (witness states that the original sale deed is mortgaged with the IDBI Bank, Ashok Nagar Branch and the same has been averred in para 9 of the proof affidavit. This document is marked subject to its admissibility, proof and relevancy)
P9	The declaration of willingness to accept the office of the guardian of the person of the minor child A.Muhammed Rayan.

Respondent's witness:

R.W.1 – Mrs.S.S.A.Khadija

R.W.2 – Mr.Syed Feroz

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
R1	The photocopy of the Aadhaar Card of the petitioner (compared with the original)



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<i>Exhibits</i>	<i>Documents</i>
R2	The photocopy of the Aadhaar Card of minor A.Muhammed Rayan (compared with the original)
R3	The photocopy of the family card (compared with the original)
R4	The photocopy of the school identity card of minor A.Muhammed Rayan issued by Modern Matric Higher Secondary School, Salem 5 (compared with the original)
R5	The photocopy of the Aadhaar Card of Mr.Syed Feroz, R.W.2

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C.V.KARTHIKEYAN, J.

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