



O.P.Nos.149 of 2021 and 633 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :08.11.2024

Pronounced on :13.11.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

O.P.No.149 of 2021 and
O.P.No.633 of 2020

O.P.No.149 of 2021:

Titus Samuel(M-51),
Previously named as
Titus Balachitra Rajeshkumar
S/o Godfrey Samuel,
No.54/6 Ponnappa Mudali Street, I Floor,
Purasawalkam, Chennai 600 084.
Also at
A4, Fenton Court BKN Avenue,
Vepery, Chennai 600 007.

.. Petitioner

/versus/

Mrs.Sophia Samuel(F-42 years)
D/o C.Rajarethinam,
B-21, Kamlesh Enclave,
101A, Barakka Road, Secretariat Colony,
Chennai 600 010.

.. Respondent



O.P.Nos.149 of 2021 and 633 of 2020

Prayer: Original Petition has been filed under Sections 3,7,8,9,10 and 25 of the Guardians and Wards Act, 1890 r/w Order XXI, Rule 1 of the Madras High Court Original Side Rules, to appoint and declare the petitioner as the Natural Guardian of the minor daughter LIANA aged about 12 years, ordinarily residing at A4, Fenton Court BKN Avenue, Vepery, Chennai 600 007 and grant custody of the girl to the petitioner until the minor girl attains the age of 18.

For Petitioner :Mr.Praveen Alexender
For Respondent :Mr.B.Mohan

O.P.No.633 of 2020:

Mrs.Sophia Samuel(F/42),
W/o Titus Samuel,
B-21 Kamlesh Enclave,
101A, Barakka Road, Secretariat Colony,
Chennai 600 010.

.. Petitioner

/versus/

Titus Samuel(M-51),
(Previously named as
Titus Balachitra Rajeshkumar)
S/o Godfrey Samuel,
No.54/6 Ponnappa Mudali Street, I Floor,
Purasawalkam, Chennai 600 084.
Also at
A4, Fenton Court, BKN Avenue,
Purasawalkam, Chennai 600 007.

.. Respondent

2/20



O.P.Nos.149 of 2021 and 633 of 2020

WEB COPY

Prayer: Original Petition has been filed under Sections 3,7,8,9,10 and 25 of the Guardians and Wards Act, 1890 r/w Order XXI, Rule 1 of the Madras High Court Original Side Rules, to pass an order:

(a)to appoint and declare the petitioner as the Natural Guardian of her minor daughter LIANA aged about 12 years;

(b)to grant custody of the girl to the petitioner till the minor girl reaches the age of 18 years.

For Petitioner :Mr.B.Mohan
For Respondent :Mr.Praveen Alexander

COMMON ORDER

These petitions to appoint guardian for the minor girl Liana (date of birth:11/03//2008) are by her parents, who are estranged and living separately. It is to be noted that the petition to dissolve the marriage filed by the father is pending in I.D.O.P.No.1448 of 2020 on the file of IV Additional Family Court, Chennai. Also to be noted that the minor girl is presently under the custody of the father.



O.P.Nos.149 of 2021 and 633 of 2020

WEB COPY

2. Titus Samuel and Sophia Samuel are the father and mother of the minor girl Liana. They both loved each other and got married on 08.02.2002 at CSI St.John's Church, Tiruchirapalli. The matrimonial house was initially at Plot No:19, Flat E, Naaz Apartment, 1st Street, Perambur High Road, Jamalia, Chennai. With fertility assistance, (IVF) Sophia Samuel gave birth to a twin children on 11/03/2008. The children were named as Ms.Leizyl Samuel and Ms.Liana Samuel. On 20/10/2018, the family shifted to a rented premises at Door No:B-21, Kamalesh Enclave, 101 A, Baraka Road, Secretariat Colony, Chennai -10.

3. One of their daughters, Ms.Leizyl Samuel fell sick on 04/11/2019 and was admitted in the Hospital. After being diagnosed Dengue fever, the child was in the intensive care unit of Child Trust Hospital, Nungambakkam, but succumbed to death on 15/11/2019.

4. It appears that till 25/09/2020 the parents and the minor girl were



O.P.Nos.149 of 2021 and 633 of 2020

under the same roof at Door No:B21, Kamalesh Enclave, 101 A, Baraka Road, Secretariat Colony, Chennai -10. That day evening, after Titus Samuel left the home with his daughter Minor Liana, Sophia Samuel had received notice from the Family Court, Chennai in I.D.O.P.No.1448 of 2020 initiated by Samuel for divorce alleging cruelty by Sophia on various dates by various means. In the said petition, Samuel has shown his address as No: 54/6, Ponnappa Mudali Street, 1st Floor, Purasaiwalkam, Chennai. Perusal of his divorce petition, Samuel admits that he and his wife Sofia were living in the same Flat but in separate room and they were not in talking terms for a long time due to misunderstanding .

5. Regarding secretly removing the child from her custody, Sofia had filed police complaint and a Habeas Corpus Petition. Thereafter, had filed a petition for interim custody before the Family Court in I.A.No.1 of 2020 in I.D.O.P.No.1448 of 2020. Thereafter, she has presented petition for Guardianship of her minor girl child Liana in O.P.No.633 of 2020. Titus Samuel, who had taken the custody of the minor child, had filed O.P.No.149

5/20



O.P.Nos.149 of 2021 and 633 of 2020

6. This Court, after completion of pleadings and considering the nature of the case and the relief sought by the parties, vide order dated 21.09.2022 directed the parties to graze the witness box and give evidence. The father, who is the petitioner in O.P.No.149 of 2021 was permitted to lead evidence which is to be termed as petitioner side evidence. The evidence of the mother, who is the petitioner in O.P.No.633 of 2020 was treated as respondent side evidence.

7. Titus Samuel is PW-1. Ex.P-1 to Ex.P-9 marked during the examination in chief. Ex.P-10 to Ex.P-14 marked during the cross examination of Sofia [RW-1]. Ex.R-1 marked during the cross examination of PW-1 and Ex.R-2 and Ex.R-3 were marked during the chief examination of RW-1.

8. The exhibits relied by the petitioner and the respondent are as



O.P.Nos.149 of 2021 and 633 of 2020

below:-

Petitioner's side Exhibits:

Exhibits	Documents
Ex.P.1	Photocopy of the extract from the register of marriage held between me and the respondent dated 08.02.2002 issued by the St.John's Church, Tiruchirapalli.
Ex.P.2	Computer generated birth certificate of the minor Liana Samuel
Ex.P.3	Photocopy of the Aadhaar Card of the minor Liana Samuel
Ex.P.4	Photocopy of my Aadhaar Card.
Ex.P.5	Photocopy of the letter dated 20.01.2020 written by the minor child
Ex.P.6	Web Copy of the order dated 05.11.2020 passed in HCP No.1783 of 2020 by this Court.
Ex.P.7	Web Copy of the order dated 08.12.2020 passed in HCP No.1783 of 2020 by this Court.
Ex.P.8	Copy of the police complaint along with CSR receipt dated 12.01.2021 lodged by Victor S Samuel to the Inspector of Police, G1 Police Station, Vepery, Chennai.
Ex.P.9	Original letter dated 18.07.2022 issued by the Principal, Union Christian Matriculation Higher Secondary School.
Ex.P.10	Photographs (series 2)
Ex.P.11	Photographs (series 2)
Ex.P.12	Photograph (series 1)
Ex.P.13	Discharge summary given by V.K.Hospital, No.77.Dr.Alagappa Road, Chennai.
Ex.P.14	Death Summary of Leizyl Samuel given by Kanchi kamakoti Childs Trust Hospital.

Respondent's side Exhibits:



O.P.Nos.149 of 2021 and 633 of 2020

Exhibits	Documents
Ex.R.1	School Progress report of our daughter.
Ex.R.2	Notice issued by Family Court, Chennai in I.D.O.P.No.1448 of 2020.
Ex.R.3	Complaint given by Sophia Samuel to Inspector of Police, Secretaries Colony, Chennai.

9. The averments made in the petitions of the respective parties discloses that the petitioner and the respondent are well educated and gainfully employed. They loved each other and got married against the wishes of their parents. For nearly 6 years, they had no issues, hence, with medical assistance by IVF had a twin babies. The life was not sailing smooth due to certain incompatibility. The husband alleges that the marriage was not even consummated and his wife is medically unfit to consummate. She used to take drinks and neglect the family and children for her pleasure of going around attending late night parties. This allegation is denied by the wife and on her part, she has alleged that her husband suffers inferiority complex and been dominated by his sister. She also alleges that her husband family members suffer psychological problem and all of them have the history of broken family. Further, she also alleges that her husband use to be



intimate with the housemaids.

10. Regarding the care showed towards the children, the case of the husband is, due to the negligence of his wife, one of the twin daughter Leizyl died. His wife failed to feed the children properly and that has caused depression to the other daughter Liana, who in her dairy had written about the conduct of her mother and fear to be with her. For this allegation, the wife says that after the birth of the children ,she left the job to take care of them and stayed at home taking care of them for 4 years. She always shown her best care to them and they were happy and comfortable with her. When Leizyl suddenly fell sick on 04.11.2019 due to dengue fever, she was on travel to Nagarcoil to attend the funeral of her maternal uncle. She returned to Chennai on 06.11.2019 and was with the child in the hospital taking care of the child.

11. The writing in the dairy allegedly by Liana is a document fabricated for the purpose to prejudice the mind of the Court. After taking



O.P.Nos.149 of 2021 and 633 of 2020

the custody of the child illegally, the husband had poisoned the child's mind and made her to write so as to use it against her. The source of the said hand written script dated 20.01.2020 not proved. None from the school been examined to prove that this letter was written by Liana and given to the school teacher, who in turn given it to the father of Liana. Therefore, the content of the letter should be ignored.

12. Marriage on 08.02.2002, the birth of twin children on 11.03.2008, death of their daughter Liezyl on 15.11.2019 and the separation of the husband and wife after 25.09.2020, are the facts not disputed and also supported by documentary evidence.

13. The allegation against the mother is that she use to take drinks and not been concerned about the welfare of the child. For that, the father has filed photographs of the mother carrying liquor tumblers and bottle. This is denied by the mother by saying once during her birthday party, she was given some drink by her husband and his brother. She came to know later

10/20



O.P.Nos.149 of 2021 and 633 of 2020

that the drink was mixed with liquor. In the cross examination of PW-1 (father) he admits that, he use to occasionally take drinks. Therefore, the father, who himself not a teetotaler, cannot have any object or grievance about his wife taking drinks. From the dairy of the Minor daughter, which is marked as Ex.P-5 it seems that the child had developed dislike towards her mother due to her drinking habit. This document which is incriminating in nature, is denied by the mother stating that it is a fabricated document and the child been made to write it by the father to prejudice the Court. However, the fact remains that the child when asked to appear before the Court to know her interest and convenience, the child was not comfortable with her mother, probably due to long separation and taken under the tutelage of the father.

14. Regarding the allegation that the mother neglected to take proper care of Liezyl, who died due to dengue, there is no evidence to substantiate the said allegation. In fact, on the day, when Liezly fell sick and got admitted in V.K.Hospital, the mother claims that she was on her way to



O.P.Nos.149 of 2021 and 633 of 2020

Nagarcoil to attend her maternal uncle funeral. On her return to Chennai, she was with her child at Hospital.

15. The counsel for the father by referring the cross examination of the mother submitted that there is contradiction in her evidence regarding the time of admission in the hospital, which shows that she was not taking care of the children. This argument is unsustainable because, Ex.P-13 the discharge summary of V.K. Hospital indicates that Ms.Leizyl was admitted in the hospital on 04.11.2019 for fever, chills, body pain, headache with tiredness and nausea. She had been diagnosed and treated for dengue fever with thrombocytopenia. After five days of treatment, got discharged and shifted to higher centre for further management. Ex.P-14 is the death summary of Leizyl Samuel issued by Kanchi Kamakoti Childs Trust Hospital. This document indicates that the daughter of the parties had developed fever, nausea and vomiting on 03.11.2019 and initially admitted in V.K.Hospital for treatment. On 08.11.2019 she was shifted to Kanchi Kamakodi Childs Trust Hospital. She been kept in Pediatrics ICU and

12/20



O.P.Nos.149 of 2021 and 633 of 2020

WEB COPY
treated. On 15.11.2019 she suffered sudden cardiac arrest. Inspite of initiating CPR, she could not revive and hence, declared dead on 15.11.2019 at 1.45 pm.

16. These two Ex.P13 and Ex.P14 were marked by the father during the cross examination of the mother. These documents does not indicate even an iota of suspicion that the death of Liezyl was due to any neglect of the mother. Hence, this allegation made by the father is false and designed to put the mother in bad light. In Ex.P-5 the letter purportedly to have been written by the Minor girl Liana, there is a reference about the death of her sister Liezyl. This letter is dated 20.01.2020. Therefore, there is reason to believe that the sudden death of Liezyl had badly affected the family and that had aggravated the fissures between the spouse.

17. For the rest of the allegations and counter allegations made against each other, there is no corroboration. Those are made to paint the other party to show their incompetence to be the guardian of the minor



O.P.Nos.149 of 2021 and 633 of 2020

child. The crude fact is that the child been taken away from the custody of the mother and been under the care and custody of her father. Her educational performance is not impressive as per Ex R-1, which is her 12th standard Quarterly examination mark sheet.

18. The Court has the duty and responsibility to be the ‘parent patriea’ of the minor child. Being a female child, the care and supervision of the mother cannot be deprived to her because for the reasons stated by the father, which found to be only partially true. However, taking note of the fact that the minor girl is presently pursuing her 12th standard, which is very crucial for any person in their life and within 15 months, she will attain the majority, disturbing her present custody will not be in her interest. Hence, the child shall remain under the custody of the father and the mother be given the visitation right and temporary custody during vacation and special occasions.

19. Accordingly, these two Original Petitions in O.P.No.149 of 2021



O.P.Nos.149 of 2021 and 633 of 2020

and O.P.No.633 of 2020 filed for guardianship of the minor girl child Liana

are disposed on the following terms: -

(i) Mr.Titus Samuel, the father of the minor child Liana, the petitioner in O.P.No.149 of 2021 is declared as the guardian of the minor Child Liana (D.O.B. 11.03.2008).

(ii) Mrs.Sophia, the mother of the minor child Liana, the petitioner in O.P.No.633 of 2020 is given the right of visitation and temporary custody of the child as under:

(a) The mother shall have the right of visitation of the child on every Sunday between 9.00 a.m. to 5.00 p.m. The visitation shall be at any common place including Church/shopping Mall/ Park and places of interest.

(b)The father should drop the child at the place of the mother at 9.00a.m. and pick the child at 5.00 p.m. The father or his relatives shall not prevent the child visitation or the receipt of gifts or other articles given by the mother to her daughter.

(c) The mother shall have temporary custody of the child for 3 days during the period between Christmas and New Year holidays. On the day of

15/20



O.P.Nos.149 of 2021 and 633 of 2020

Christmas, both the father and the mother should spend their time with the daughter together.

(d) The mother shall have temporary custody of the child for 7 days during the long holiday between the month of May-June.

(e) Both the parties shall ensure that the child is given good higher education and health care and they should share the expenses equally.

(f) The above terms shall be put into force forthwith.

20. This Court makes it clear that the observations and finding in these two petitions are made to decide the best interest of the minor child for the sake of granting guardianship and it shall not be used to prejudice either party in the divorce proceedings pending before the Family Court.

21. Accordingly, **O.P.No.149 of 2021 and O.P.No.633 of 2020 are disposed of.** No order as to costs.

13.11.2024

Index:yes/no

16/20



O.P.Nos.149 of 2021 and 633 of 2020

Speaking Order/Non Speaking order
ari

Petitioner's side witness:

P.W.1 – Mr.Titus Samuel @ Titus Balachitra Rajeshkumar

Documents Marked:

Exhibits	Documents
Ex.P.1	Photocopy of the extract from the register of marriage held between me and the respondent dated 08.02.2002 issued by the St.John's Church, Tiruchirapalli.
Ex.P.2	Computer generated birth certificate of the minor Liana Samuel
Ex.P.3	Photocopy of the Aadhaar Card of the minor Liana Samuel
Ex.P.4	Photocopy of my Aadhaar Card.
Ex.P.5	Photocopy of the letter dated 20.01.2020 written by the minor child
Ex.P.6	Web Copy of the order dated 05.11.2020 passed in HCP No.1783 of 2020 by this Court.
Ex.P.7	Web Copy of the order dated 08.12.2020 passed in HCP No.1783 of 2020 by this Court.
Ex.P.8	Copy of the police complaint along with CSR receipt dated 12.01.2021 lodged by Victor S Samuel to the Inspector of Police, G1 Police Station, Vepery, Chennai.
Ex.P.9	Original letter dated 18.07.2022 issued by the Principal, Union Christian Matriculation Higher Secondary School.
Ex.P.10	Photographs (series 2)
Ex.P.11	Photographs (series 2)
Ex.P.12	Photograph (series 1)
Ex.P.13	Discharge summary given by V.K.Hospital, No.77.Dr.Alagappa Road, Chennai.



O.P.Nos.149 of 2021 and 633 of 2020

Exhibits	Documents
Ex.P.14	Death Summary of Leizyl Samuel given by Kanchi kamakoti Childs Trust Hospital.

Respondent's side witness:

R.W.1 – Mrs.Sophia Samuel

Documents Marked:-

Exhibits	Documents
Ex.R.1	School Progress report of your daughter.
Ex.R.2	Notice issued by Family Court, Chennai in I.D.O.P.No.1448 of 2020.
Ex.R.3	Complaint given by Sophia Samuel to Inspector of Police, Secretaries Colony, Chennai.

13.11.2024

ari



WEB COPY



O.P.Nos.149 of 2021 and 633 of 2020

DR.G.JAYACHANDRAN,J.

ari

delivery Common Order made in
O.P.No.149 of 2021
and
O.P.No.633 of 2020



WEB COPY



O.P.Nos.149 of 2021 and 633 of 2020

13.11.2024