



O.P.No.168 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.04.2024

Coram:

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

O.P.No.168 of 2024

Esther Deepika

.. Petitioner

Vs.

G.Saiman Marshall

.. Respondent

Original Petition filed under Sections 3, 7, 10 and 12 of the Guardians and Wards Act, 1890 read with order XXI Rules 2 and 3 of the Original Side Rules and Clause 17 of the Letters Patent Act, 1865 to appoint as the Guardian of the person of the minor children i. S.Sasha Gabriella born on 25.04.2014 and S.Rowan Raphael born on 11.04.2019 and to grant permanent custody of the minor children S. Sasha Gabriella, born on 25.04.2014 and S.Rowan Raphael born on 11.04.2019 by the petitioner.



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For petitioner : Ms.K.Sumathi

For respondent : Mr.P.Esakki Durai

ORDER

The mother of two children S.Sasha Gabriella and S.Rowan Raphael born on 25.04.2014 and 11.04.2019 respectively, has filed the present petition taking advantage of Sections 3, 7, 10 and 25 of the Guardian and Wards Act, 1890 read with relevant rules of the Original Side of the Madras High Court seeking to be appointed as guardian of the person of the two minor children and also to grant permanent custody of the said minor children. The respondent in the petition is the father of the children.

2. The marriage between the petitioner and the respondent was solemnized on 12.06.2013 and the two children were born on 25.04.2014 and 11.04.2019 respectively. They are, as on date, in the custody of the petitioner. Owing to irreconcilable differences between the petitioner and the respondent, they had filed I.D.O.P.No.829 of 2024 under Section 10A of the Indian Divorce Act, which is now pending on the file of I Additional Family Court,

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Chennai. Even at the time of filing of this petition, the respondent had filed an affidavit accepting that the petitioner herein be appointed as guardian and also be granted permanent custody of the children. A Joint Memorandum of Compromise dated 15.04.2024 had been presented in open Court.

3. I had an interaction with the petitioner and the respondent in the Chambers. The petitioner and the respondent were also accompanied by their respective counsels. The parties were also informed about the nature of the terms of the compromise. After further discussion in the Chambers, both the petitioner and the respondent have agreed to abide by the following terms of the compromise :

i) The respondent had agreed that the petitioner can be appointed as the guardian of the two children and can have permanent custody of the said two children;

ii) The respondent expressed his inability to pay any maintenance and hence, the petitioner's responsibility to maintain the children has increased;

iii) There are also terms by which the respondent had stated that he would give up visitation rights and will not seek alteration



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or amendment of this order by seeking guardianship of two children in future;

iv) The petitioner had also agreed not to claim any maintenance or alimony from the respondent for the children;

v) The parties had exchanged their immovables including jewellery and there are no further claims as against each other;

vi) They have also agreed that they will not interfere with the life of each other.

4. These condition would also mean that the petitioner is at liberty to take the children to any place where, she is of the opinion, would offer a more conducive atmosphere for their educational prospects and growth. This would also permit her to go to any other country for employment and for the educational prospects of the children. The petitioner is also permitted to take the children with her if she gets an opportunity to leave the shores of the country seeking employment and also to attain further technical skills.

5. The Memorandum of Compromise dated 15.04.2024 which has been signed by both petitioner and the respondent and by their respective counsel shall form part of this order and the decree passed.



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6. The petitioner is declared as the guardian to two children S.Sasha Gabriella and S.Rowan Raphael, born on 25.04.2014 and 11.04.2019 with additional right to have exclusive custody of the two children. If the respondent seeks to see the children, the request for visitation should be made by giving sufficient notice to the petitioner in advance and any visitation can be only under the terms as laid down by the petitioner. The children should not be denied the opportunity of meeting their father's relatives and parents, at any function. I am confident that the respondent, if he comes to a better financial position would take every effort to support the two children in their education and in other aspects.

7. In view of the above, the Original Petition stands allowed. There shall be no order as to costs.

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