



O.P.No.527 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 14.11.2024

Pronounced on: 18 .11.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Original Petition No.527 of 2023
& Application Nos.4616 & 4618 of 2023

Stanley J Samuel.

... Petitioner

/versus/

S.B.Angelin Cilicia.

... Respondent

PRAYER: Original Petition has been filed under Sections 3, 7, 8, 9, 10 and 25 of the Guardians & Wards Act, 1890 read with Order XXI Rule 2 & 3 of Original Side Rules, pleased to:

a) To appoint the petitioner as the Guardian of the person of the minor child S.A.Adriana Samuel.

b) To grant permanent custody of the minor child, S.A.Adriana Samuel to the petitioner.

For Petitioner : Mr.Dayalu Suresh Kumar

For Respondent : Mr.M.Hariharan



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ORDER

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This petition is filed by the father/petitioner under Sections 3, 7, 8, 9, 10 and 25 of the Guardians & Wards Act, 1890 read with Order XXI Rule 2 & 3 of Original Side Rules for guardianship of the minor child S.A.Adriana Samuel (D.O.B 03.08.2015), who is presently with her mother/respondent.

2. The brief facts of the case as narrated in this petition by the father is as below:-

(i) The marriage between the petitioner and respondent was solemnised on 25.06.2014 at Outdoor Gospel and Social Work India, No.17/1, Radial house, Anna Nagar West Extension, Chennai-600 101 as per Christian Rites and Customs and the same was registered on 11.07.2014 before the marriage registrar in Serial No.2875 of 2014, under the Tamil Nadu Registration of Marriages Act, in the Office of the Marriage Registrar, Chennai-600 028. After the marriage matrimonial home was set up at Chennai. A female child S.A.Adriana Samuel was born on 03.05.2015. The marriage was second marriage for both the petitioner and the respondent. The petitioner was earlier married and got divorced and has no child born out of that wedlock and the respondent also was earlier married and divorced and has no child born out of



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that wedlock.

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(ii) Right from inception of the marriage, the respondent was not comfortable in the matrimonial home and she picked up petty quarrels with the petitioner. The petitioner did everything possible to make the respondent comfortable in the matrimonial home. The respondent was in the habit of arguments over minor issues and constantly tortured the petitioner on many occasions. The respondent's parents and sisters kept on interfering in their matrimonial life and that cause a rift between them. The respondent won't appreciate the petitioner for all his efforts taken to keep the respondent happy instead she will always find some fault on the petitioner for trifling issues and picked up quarrel with the petitioner. It will not be out of place to mention here that the petitioner tolerated all frustrating acts of the respondent. Considering the welfare of the family and also with a fond hope that one day the respondent realizes her mistakes and shall treat the petitioner properly.

(iii) After delivery of the minor child in the hospital, the respondent and her parents instructed the hospital staffs quoting some reasons and made sure not to permit the petitioner and his mother to see the new born minor child. After much deliberation and arguments with the hospital staffs, the respondent



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was able to see the new born minor child which caused great mental agony to the petitioner. Soon after the discharge from the hospital, the respondent went back to her parental home and stayed with her parents. The petitioner kept on calling the respondent in order to visit and see the minor child but every time the respondent finds some reasons and shouts at the petitioner with abusive languages in order to avoid the petitioner visiting to her parent's house which causes complete humiliation and distress to the petitioner and that refrains him from seeing his daughter at the respondent's parents house.

(iv) On the 40th day of the birth of the child, the petitioner requested the respondent to return to the matrimonial home along with his daughter but she refused to do so and the respondent's parents picked a quarrel with him over the same stating that their daughter must be raised only by the respondent's family and they had more rights and interest over the child. The petitioner submits that he was deprived of his right as a father in upbringing his daughter. The 1st birthday of their daughter S.A.Adriana was to be held on 03.05.2016, the respondent nor her family members made any arrangements for that occasion. The petitioner with lot of love for his daughter bought new dress, cake etc., and went to the respondent's home to celebrate his daughter's birthday but all went in vain. The respondent and his family insulted the petitioner and



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refused to open the door. After several request, the respondent and her family

members allowed the petitioner to celebrate their daughter's birthday.

(v) The petitioner constantly requested to the respondent and the daughter to come to the matrimonial home but the respondent states that she was not keen on living with the petitioner and his mother under one roof. Considering the welfare of the respondent and the daughter, the petitioner took a separate house on rent, at DS3, Vinoth Veronica, VGN Mahalakshmi Nagar, Thiruverkadu, Chennai 600 077 and appointed domestic help to take care of all household chores and the needs of his daughter. On many occasions, the respondent had threatened to leave the matrimonial house and stay with her parents and behaved disrespectfully if he did not adhere to her unreasonable demands due to which he avoided arguments with the respondent as much as possible. Since the respondent was working, the child was left in the petitioner's mother's house from 10:00 a.m to 8:30 p.m till the child attained 2 and half years and his mother took good care of the child during that period every day while return back home from office, the respondent picks up the child and puts off her to sleep by 10 p.m, she would be always on social media from 11:00 PM to 03:00 AM without any botheration for the welfare of the petitioner and the child. Further, the respondent would not even take time to feed the child



properly or take care of her personal hygiene which caused the child to fall sick every now and then.

(vi) On 08.12.2018, the respondent unnecessarily picked a quarrel with the respondent's mother and asked her father to come and take her back to her parents' home stating that she was more comfortable living there and that the petitioner could come and visit his daughter only after seeking her permission for the same. The respondent has inherent cynical nature and negative attitude which was seen by her impulsive violent reaction even for petty things. Subsequently, for the sake of his daughter, despite being disrespected by the respondent's family when he did visit his daughter at the respondent's house, he found that his daughter was living under unhygienic conditions where she did not even have a clean pillow or blanket and was given the food which was kept in refrigerator one or two days back due to which, she was suffering from various ailment for which, she had to be taken to the hospital several times that year. On 03.05.2019, when the petitioner and his mother visited the daughter for her 4th birthday, they were shocked to see that child was walking around house where construction was taking place with a lot of debris all around which was unsafe for the child. The respondent and her mother were neglecting to take care of the daughter.



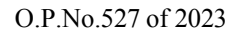
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(vii) The respondent had moved to Perungudi and without the petitioner's knowledge. The respondent had enrolled their daughter in St John's School, Besant Nagar as her sister's daughter was studying in that school. The respondent deliberately deprived the petitioner of building a relationship with his daughter and has time and again resorted to insulting and demeaning tactics against the Petitioner.

(viii) With no other alternative approached the Hon'ble Court and filed O.P.No.791 of 2020, a petition under Section 10(1)(X) and Section 43 of the Divorce Act praying for dissolving the marriage solemnized between himself and the respondent on the ground of cruelty and grant permanent custody of the minor child S.A.Adriana to the petitioner. The respondent was set *exparte* in O.P.No.791/2020 and the Hon'ble Court *vide* its order dated 29.09.2021 had dismissed the petition for divorce and also rejected the prayer for child custody stating that the petitioner should file a separate petition for seeking the relief of child custody and same was dismissed. Therefore, the petitioner has left with no other alternative except to approach this Hon'ble Court to seek remedy.

3. The respondent/mother in response to the allegation made and



(i) In her counter to the application seeking interim custody, the respondent has stated that the petition is not maintainable either in facts or on law and is liable to be dismissed as the averments in the petition is false, manipulated and fabricated for the purpose of the petition. The real scenario is absolutely different and the petitioner always subjected her to harassment and cruelty to the extent of driving her and her child from the house to save their lives. The petitioner never showed love nor took care of the respondent and their daughter at any point in time. After the marriage, the respondent was shocked to know that the petitioner is a man of vices. The petitioner is a chain smoker and alcoholic. He used to keep cigarette packets and buds everywhere at home and half-finished liquor bottles in the refrigerator, which was accessible to the child. Once when the child was about to bite a cigarette, the respondent only protected the child. Even after continuous request, he never bothered for the same. He is also a bike racer. Though he promised to stop going to racing track, he has not stopped even after his own brother lost his life in race. He



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never thought of quitting his bad habits at least for the sake of their child. He risked both the respondent's and her daughter's life by his drunken drive.

(ii) The petitioner exhibits erratic and brutal behavior often at home. He broke one big new LED TV 55" just by stamping his leg on it and two smart phones by throwing them on the floor and their daughter's sunglasses by stamping on it, immediately after the purchase. He broke bedroom door's lock two times intentionally during domestic violence. Many times the respondent was beaten up by the petitioner violently and injured badly in front of the child and was given life threat. One time when the child was crying, without showing any mercy, the petitioner locked up the 2 year old child in a room and left her alone crying without any attention. This event is still itched in the memory of the child permanently. The abusive language is very commonly used by the petitioner and was even taught to the 2-year-old child to repeat saying it. The child witnessing these domestic outbreaks of violence, experienced nightmares frequently for a couple of years, now after giving much care with love and affection, the nightmare frequency is much reduced and returning to normalcy.

(iii) The petitioner's mother and his sister often pressurized the respondent to engage her daughter for modeling photoshoot out and wanted to



earn by engaging her in Social Media. The respondent is totally against this proposal which further angered them. Since the petitioner's brother-in-Law is working in the film industry, the petitioner tried to promote the girl child to act as a model to earn money using the influence of his brother in law's film industry experience.

(iv) The petitioner and his mother were living in his brother-in-law's house before their marriage and they didn't have any separate house for them. The petitioner was not comfortable in staying there and hence he preferred to start their marital life at the respondent's independent house. After their marriage, the petitioner and respondent set up their matrimonial home at Perungudi, Chennai in the respondent's own three bed room independent house. She always moved well the petitioner's mother and sister and she denies the allegation she was comfortable with them.

(v) The allegation of the petitioner that, she would complain with her parents and sister even for minor issues and arguments, as false. The petitioner frequently assaulted her inebriated condition and only in extreme cases, she let her parents know about her painful marital life. The respondent's



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parents and sister advised her to be patient and try to change the petitioner's behaviour.

(vi) Since, the respondent was 32 years old at the time of pregnancy, she wanted to be more careful. But the petitioner did not worry about the same and he continued to harass her even when she was pregnant. The respondent's parents had booked the highest charged ward i.e., Super Deluxe AC Room which had three rooms in a top rated hospital, Dr.Mehta's Hospitals for the delivery to accommodate everyone, including the petitioner and his mother too. But the petitioner and his mother are too egoistic and was creating continuous mental torture to make the respondent's parents and her sister (the Gynaecologist, who came from Kancheepuram for support) to leave the room as they wanted to occupy fully. Finally, the respondent's parents left the hospital as soon as the baby was born then the petitioner's mother and his sister's family stayed there the entire night. They abused the respondent verbally there itself and she was not even able to stay there peacefully with her newborn child. Since the delivery was normal and both mother and child were in good condition, they were discharged next day. The entire expenses towards pre-delivery and post-delivery were borne by the respondent and her parents. Not



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even a single penny was spent by the petitioner. He never accompanied the respondent during any medical checkups and scans etc., during the pregnancy.

(vii) The respondent and her child were taken care of by her parents for three months in their house at Egmore. The Respondent used to follow clean and hygiene habits as an educated dutiful mother and she was also guided by her doctor-sister especially when she fed and took hold of the child. But the petitioner kept on finding fault and insisted her to come to his brother-in-law's rented house on 40th day itself as the petitioner and his mother were staying as a dependent. Though the Respondent requested him to come to their matrimonial house in Perungudi, he refused to come and compelled her to come to his brother-in-law's rented house, the house space is very limited to accommodate our family.

(viii) The respondent was continuously requesting her mother-in-law to come and support the child at her matrimonial house at Perungudi, as her maternity leave was getting completed. She agreed, but before the joining date to work, she was not allowed by her daughter to come and support the respondent. As the petitioner's sister was not willing to leave her mother and the petitioner wanted their daughter to be taken care by her mother only, the



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petitioner compelled to take a rental flat in the same premises of his Brother in

Law's apartment in Tiruverkadu and forced the respondent to stay without getting an opinion. The respondent's office is located at Tambaram, MEPZ, approximately 30 Kms away from the rental flat in Tiruverkadu. As a new mother, she was forced to travel nearly 60Kms to and fro, for more than 3½ hours every day. As an IT professional women employed in a stressful IT work environment, commuting 60Kms a day after 10 hours of hectic work, performed all household duties including cooking, cleaning, laundry without the support of a maid. It is a blatant lie to say that she was engaged in social media from 11p.m to 3 a.m. If she had stayed in Perungudi, she could have avoided travel time and exhaustion she could have spent more with the child. The petitioner and his mother who sat at home without any commitment, blamed her and quarreled with her every day. She was verbally abused by them. Both the petitioner and his mother was negligent in taking care of the child. Once the child was left alone and the child was hit on the floor and got injured leading to three stitches on her head. Another time, child was left alone in the flat's terrace and got severe scratches on her thighs very badly. It took two weeks for recovery of the child.

(ix) The respondent denies the allegation that on the 1st birthday of



their daughter, the respondent and his family insulted the petitioner and refused

to open the door. It's a fabricated and false statement. The truth is her 1st

birthday is celebrated at the petitioner's rented flat without inviting any of the relatives from the respondent's side, including her parents and sisters who have been taking care of the child from before and after birth. Photographs of the birthday event are attached to prove that false allegations have been made.

When the event itself happened at the petitioner's house, how respondent deny opening the door for the petitioner. In fact the respondent's family was under mental trauma as they were not allowed to visit and bless the child. This itself proves how the petitioner frames the statements against the respondent in every case.

(x) The petitioner did not have a stable income and was not interested to work and earn, the respondent, being a female has picked up additional responsibilities to take care of the family, to meet the payment of Equal Monthly Instalments for their locked house at Perungudi, rent for the rental house at Thiruverkadu and the expenses towards food, child care, medical expenses. school fees and day to day requirements etc. He often came to the respondent's office to get money for his drinks, when denied or hesitated, he



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picked up a quarrel and asked both the respondent and her child to leave the house at midnight in the presence of flatmates.

(xi) The petitioner's racing team i.e., nearly 2 to 3 persons often came from Kerala and Bangalore and stayed at home without informing the respondent. It would be shocking to see them waking from their guest bedroom in the mornings, which caused an unsafe environment for her and her girl child at home. Also, often the petitioner and his team customizes the race bikes at the midnights in home entrance keeping the main door open, this often creates an unsafe environment.

4. By making counter-allegations and highlighting the petitioner's financial and mental incapacity to have the custody of the minor girl child, the respondent has prayed for the dismissal of the petition.

5. Pending disposal of the petition, by order of this Court the petitioner/father was given visitation rights on Sundays for three hours. The parties were directed to let evidence to prove their respective claims. Accordingly, the petitioner and respondent examined themselves as P.W.1 and R.W.1, respectively and Ex.P.1 to Ex.P.4 and Ex.R.1 to Ex.R.15 as documents



were marked.

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6. The proof affidavit filed in lieu of chief examination are almost repetition of the respective pleadings, which has been briefly summarized above.

7. During the cross examination of the petitioner, it was elicited that he has not filed documents to prove his income and that he is living in a rented house. He admits that he has not contributed to the child's educational expenses and is unaware of his child's proficiency in education and extracurricular activities, including sports. It is also an admitted fact that the petitioner's attempt to obtain divorce on the ground of cruelty failed. Ex.R.1 and Ex.R.2 are the photographs of the minor child with injuries and scars, which alleged to have been caused by the petitioner.

8. Ex.R.4 proves that the child's educational expenses are meet out by the respondent mother and not by the petitioner. Ex.R.5 to Ex.R.12 discloses that child is excelling in her school, winning meritorious awards in sports and singing. It is evident that the petitioner has not contributed anything for the welfare of the minor child or shown any interest to provide her care and protection.



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9. Therefore, in the best interest of the minor girl child, it is appropriate to allow the child to be under the care and custody of the mother/S.B.Angelin Cilicia.

10. In the result, this ***Original Petition is dismissed.***
Consequently, connected applications also stands dismissed.

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Index :Yes/No.

Internet :Yes/No.

bsm

Petitioner's witness:

P.W.1 – Mr.Stanley J Samuel.

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P.1	Marriage invitation card of mine.
Ex.P.2	Photocopy of my marriage extract dated 25.06.2014 issued by Additional Inspector General of Registration of births, deaths and marriages, Chennai – 28 on 11.07.2014
Ex.P.3	Computer generated birth certificate of my minor daughter S.A.Adriana Samuel.
Ex.P.4	Photocopy of my Aadhaar Card.

Respondent's Witness:-

R.W.1 – Mrs.S.B.Angelin Cilicia.

Documents marked:



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<i>Exhibits</i>	<i>Documents</i>
Ex.R.1	Photograph showing the stitches on the head of my minor daughter S.A.Andriana Samuel
Ex.R.2	Photograph showing the scratches on the thighs of my minor daughter S.A.Andriana Samuel
Ex.R.3	(Series 4 Nos) are the photographs taken on the first birthday of my minor daughter S.A.Andriana Samuel
Ex.R.4	(Series 5 Nos) are the photocopies of the school fees receipts of my minor daughter S.A.Andirana Samuel for the period 11.02.2019 to 13.05.2023 paid to St.John's English School & Junior College, Besant Nagar, Chennai – 90.
Ex.R.5	Photocopy of the certificate of participation of my minor daughter S.A.Andriana Samuel obtaining 1 st Rank conducted by National Science Olympiad dated December, 2022
Ex.R.6	Photocopy of the certificate of merit awarded to my minor daughter S.A.Andriana Samuel having obtained 1 st Place in Silambam Tournament conducted by Dhuronachariyar Self Defence Silambam Academy on 26.06.2022
Ex.R.7	Photocopy of the certificate of merit awarded to my minor daughter S.A.Andriana Samuel having obtained 1 st Place in Silambam Tournament conducted by Chengalpattu District Silambattam Association for year 2022-2023
Ex.R.8	Photocopy of the participation/merit certificate awarded to my minor daughter S.A.Andriana Samuel for the participation in the State Level Chess Tournament on 27.11.2022 held at MIT Anna University, Chennai.
Ex.R.9	Photocopy of the certificate of merit given to my minor daughter S.A.Andriana Samuel for participating Rev.Peter Cochran Memorial Scripture Examination 2022 on 13.11.2022
Ex.R.10	Photograph showing the certificate of appreciation in Singing competition by minor daughter S.A.Andriana Samuel in the year December, 2022
Ex.R.11	Photocopy of the certificate of appreciation awarded to my minor daughter S.A.Andriana Samuel having obtained 1 st Prize in singing competition conducted by CSI Immanuel Church, Chennai - 96
Ex.R.12	Photocopy of the certificate of participation awarded to my minor



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<i>Exhibits</i>	<i>Documents</i>
	daughter S.A.Andriana Samuel having participated in Torch Bearer sports meet 2022-2023 conducted by St.John's English School & Junior College, Chennai – 90 on 26.01.2023
Ex.R.13	Photograph showing my minor daughter S.A.Andriana Samuel that the said photo is displayed in school website about the participation of my minor daughter
Ex.R.14	Photocopy of the certificate of participation awarded to my minor daughter S.A.Andriana Samuel having obtained 1 st Rank in SOF International General Knowledge Olympiad in the year September, 2022.
Ex.R.15	Pen drive which contains the photographs for Exs.R1 to R3, R10 and R13.

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Dr.G.JAYACHANDRAN,J.

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Pre-delivery order made in
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