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O.P. No.146 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

O.P. No.146 of 2024

S.Mumtaj Begum

... Petitioner

Vs

Mohammed Nina Sikkandhar

... Respondent

PRAYER: Original Petition is filed under Sections 7,9 & 25 of the Guardians and Wards Act, 1890 r/w Order XXI Rules 2 and 3 of the Original Side Rules praying to (i) appoint the petitioner as legal and natural guardian of the person of the minor girl child Aysha Nuzla, aged about 12 years and minor male child Mohamed Fahd, aged about 9 years and (ii) grant permanent custody of the above children to the petitioner herein.

For Petitioner	:	Mr. R. Abdul Mubeen
For Respondent	:	Mr.I.Abdul Basith

ORDER

This petition has been filed by the petitioner / mother to appoint her as legal and natural guardian of the minor girl child Aysha Nuzla, aged about 12 years and minor male child Mohamed Fahd, aged about 9 years and (ii) grant permanent custody of the above children to the petitioner herein.

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2. The brief averments of the petition are as follows:-

(i) The petitioner and the respondent are husband and wife and their marriage was solemnised on 27.11.2007 and out of the wedlock, three children, namely, first son, Ahamed Salaf, second child, Aysha Nuzla and third son, Mohamed Fahd were born. Due to misunderstanding between the petitioner and the respondent, the respondent, took the children to his native at Keelakkarai and thereafter not returned. When the petitioner went to Keelakkarai to see her children, on 18.02.2020, the family members of the respondent attacked the petitioner and locked her in a room and obtained signature in the blank papers.

(ii) The respondent also married another woman at Keelakkarai and therefore, her three children have been tortured. The 2nd wife of the respondent is not taking care of the minor children born through the petitioner. The respondent failed to discharge his obligation as dutiful father towards his children. The respondent is not in a position to provide good education and if the children are under the care and custody of the respondent, their future will get spoiled and therefore, the custody of the children have to be granted to the petitioner and she has to be appointed as legal guardian of the minor children, therefore, filed this petition.



3. The brief averments of the counter filed by the respondent are as follows:-

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(i) The petition is not maintainable and the same is liable to be dismissed. The relationship between the parties are admitted. The petitioner has suppressed the material facts and approached this Court with unclean hands. The averments that due to the quarrel between the petitioner and the respondent, the respondent went to keelakkarai, where the petitioner was assaulted and the respondent's family obtained signatures in the blank papers, are all denied as false.

(ii) The allegation in respect of alleged assault are also denied. In fact, the petitioner despite being in an illegal affair with one Ameersultan, who was her paramour and already married, which came to light to the family members and thereafter, the petitioner tried to elope with her paramour and also she attempted to commit suicide by saying that she will only live with Ameersultan. The said facts have been suppressed by the petitioner. She also suppressed her second marriage with the said Ameersultan. In fact, on 22.02.2021, the petitioner, on her own had approached Jamath and given Kula to the respondent saying that she did not want the children and the same was acknowledged by her own family members before the Jamath members. The said Kula was effected and acted upon by the petitioner and



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subsequently, the petitioner got married with the said Ameersultan. While the facts are being so, suppressing all the facts, the petitioner filed this petition and all the allegations levelled in this petition are all denied as false.

(iii) Further, the 1st child, namely, Ahmed Salaf is studying in Jamiyathul Hiqma Arabic College, Pondicherry. The 2nd and 3rd children who are aged 12 and 9 years old respectively are studying in Ramanathapuram in Sathakathun Jaria Middle School, Keelakkarai. All the three children are taken care by the respondent with utmost love and affection and he has been providing all the necessities as required by them. The petitioner, who left the three children, without even taking into consideration of their interest, future and welfare and married Ameersulthan and had given birth to a son through second marriage, therefore, now this petition has been filed only to harass the respondent. The respondent is a natural guardian and he is taking care of the children. The petitioner has no means of the income to take care of the children and she herself depending on her present husband and therefore, this petition is liable to be dismissed.



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4. Upon hearing both sides and perusing the records, the point for determination in this petition is,

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“Whether the petitioner can be appointed as guardian person for the minor children and the custody of the children can be granted to the petitioner?”

In order to prove the case of the petitioner, on the side of the petitioner, P.W.1 was examined and marked Exhibits P.1 to P.8. On the side of the respondent, R.W.1 was examined and Exhibits D.1 to D.3 were marked.

5. The learned counsel appearing for the petitioner would submit that the petitioner is the mother of the minor children, namely Aysha Nuzla, aged about 12 years and minor male child Mohamed Fahd, aged about 9 years and the respondent is the father to the said children. Due to family dispute, the respondent forcibly separated the children from the mother / respondent and the mother is capable to maintain the children and the respondent is not taking care of the minor children. The petitioner is ready to maintain the children and therefore, she may be appointed as guardian and the custody of the children may be given to the petitioner. In order to prove the case of the petitioner, on the side of the petitioner, P.W.1 was examined and marked Exhibits P.1 to P.8, thereby the petitioner has clearly proved the case and the petition is liable to be allowed.



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6. The learned counsel appearing for the respondent would submit that the petitioner had affair with one Ameersultan and she eloped with him leaving the three children and now the children are under the care and custody of the respondent. The respondent being the dutiful father of the children is maintaining the children and they are comfortable with the respondent. The petitioner, through the second marriage begotten a male child and she is depending on the income of the second husband and she has no independent income, therefore, only to harass the respondent, the present petition is filed. Therefore, this petition is liable to be dismissed.

7. Heard the learned counsel on either side and perused the documents placed on record carefully.

8. In this case, the petitioner / mother filed the present Original Petition seeking guardianship and grant of custody of the minor children. It is an admitted fact that the petitioner and the respondent are husband and wife and thereafter, they were separated and now both got 2nd marriage and are residing separately with their respective spouses. The minor children are with the respondent. The first child born to the petitioner and the respondent had attained majority and the other two children are still minors.



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The petitioner has not stated about her financial source and even in the petition she stated that her second husband has all means and income to take care of the children.

9. The petitioner during her cross-examination admitted Kula and also stated that her first husband and family members compelled her to sign in the blank papers but she was not willing to sign in those papers and also she admitted the signature found in Ex.D.1. The respondent also filed counter and there is no denial in the said counter and she herself admitted the second marriage with Ameersultan and the said Ameersultan was also already married with another woman and has a special child through his wife. The petitioner also begotten a male child through second marriage and she has no separate income and she is a house wife depending upon her husband.

10. The respondent was examined as D.W.1 and he categorically deposed that the children are studying in a reputed school and they are under the care and custody of the respondent and he is taking care of them. Further, there is no any adverse interest against them and the petitioner also has not stated any valid reasons to remove the custody of the children from the guardianship of respondent / father. Moreover, this Court also



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enquired the children through video conference, at that time, the children have stated that they are very comfortable with the father and they are not willing to go with their mother. It is well settled law that as far as the custody of the children are concerned, the welfare of the minor children is the paramount consideration and both the minor children are very comfortable with the father and the father is taking care of the minor children. The petitioner herself depending upon the income of her second husband and there are no grounds to grant the custody of the minor children to the petitioner. Either in the pleadings or in the evidence the petitioner nowhere stated about the disqualification of the respondent from acting as natural guardian of the minor children. When the children are very comfortable and growing with good condition in all respect, thereby the custody of the minor children need not be disturbed. If the custody of the minor children are disturbed it will affect the future of the minor children. Therefore, it is not appropriate to allow this application.

In view of the above, there is no ground to allow this application and this application has no merits and deserves to be dismissed. Accordingly, this application is dismissed.

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Index : Yes/No
Speaking Order : Yes/No
ssd

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APPENDIX:

List of Petitioner side Witnesses:

PW1 : Mrs. S.Mumtaj Begum

List of Petitioner side Documents:

Exhibit No.	Date	Description of Documents.
Ex.P.1.	25.11.2007	Original marriage invitation card of petitioner and respondent
Ex.P.2	-	Original family photo taken in the house of the petitioner
Ex.P.3	01.02.2024	Online copy of the Birth certificate of first male child Ahamed Salaf
Ex.P.4.	01.02.2024	Online copy of the Birth Certificate of girl child, Aysha Nuzla
Ex.P.5	01.02.2024	Online copy of the Birth Certificate of male child Mohamed Fahd.
Ex.P.6		Photocopy of the Petitioner Aadhar Card (Original Produced, compared and returned.)
Ex.P.7	-	Photocopy of the Aadhaar card of boy child Mohamed Fahd
Ex.P.8	27.02.2022	Photocopy of the Police Complaint given by the petitioner to the Commissioner of Police, Greater Chennai Corporation, Chennai and the Inspector of Police, B-1, North Beach Police Station

List of respondent side Witnesses:

RW1 : Mr. Mohamed Naina Sikandar



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List of Respondent side Documents:

Exhibit No.	Date	Description of Documents.
Ex.D.1.	22.02.2021	Original Khula Nama
Ex.D.2	17.04.2024	Original bonafide certificate of Aysha Nuzla
Ex.D.3	17.04.2024	Original Bonafide certificate of Mohamed Fahad

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