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O.P. No.577 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : **15.10.2024**

Delivered On : **28.01.2025**

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

O.P. No.577 of 2022

Manju Bhargavi

... Petitioner

Vs

G.Rammohan

... Respondent

PRAYER: Original Petition filed under Section 3, 7 to 10 and 25 of the Guardian Wards Act, 1890 r/w Order XXI Rules 2 and 3 of O.S. Rules, to appointing the petitioner as the guardian of person of the minor child Samirra Gubbala aged about 8 years and to grant permanent custody of her to the petitioner.

For Petitioner : Mr.A.Ameer Suhail Ahamed

for Mr.G.RM.Palaniappan

For Respondent : Ms.Mrudula

for Mr.M.Madhu Prakash



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ORDER

The petitioner and the respondent are referred to as mother and father respectively. The present petition has been filed for appointment of guardian under Sections 3, 7 to 10 and 25 of the Guardian Wards Act, 1890 read with Order XXI Rules 2 and 3 of the Original Side Rules.

2(a) The mother has filed the petition for appointing her as permanent legal guardian, as she is working as Manager of Collections at Dubai and the father is working as Manager in HDFC Bank at Chennai.

2(b) The father has also filed HMOP No.452 of 2023 before the V Additional Judge, Family Court, Chennai for divorce on the ground of cruelty and the same is pending.

2(c) In this case, a counter has been filed. Mother examined herself as PWI and cross examination was also over. Ex.P1 to Ex.P4 were marked as exhibits. The father of the minor child has filed a proof affidavit. However,



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he was not present before the learned Master for examination. Hence, as per the directions of this Court on 20.06.2024, this matter was posted before the learned Master for recording the evidence of the respondent/father on 27.06.2024. However, the father has not tendered his evidence. Again the matter was called on 01.07.2024 and once again assurance was tested out to appear before the learned Master, failing which, direction was issued to post the matter before this Court on 18.07.2024.

2(d) The father was examined on 11.07.2024. However he would subject himself to cross-examination on behalf of the petitioner/mother. Hence, the matter was posted before this Court for argument after closing the respondent side evidence.

3.1.During the trial, the petitioner/mother was examined as P.W.1 by the Master Court and Ex.P.1 to Ex.P4 were marked. Ex.P.1 is the marriage invitation. Ex.P.2 is the passport copy of the petitioner. Ex.P.3 is the passport copy of the minor child, Samirra Gubbala and EX.P.4 is the birth certificate. P.W.1 was examined and she was deposed as pleaded in the petition. Before marriage, the mother was employed in Dubai and the father was employed in Chennai. There was a discussion about the place of



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settlement after marriage. Both the parties have presented their own version.

WEB COPY The marriage between the petitioner and the respondent took place on 10.07.2009.

3.2. According to P.W.1, she quit her job in the year 2010-11 and came back to India and on her own, she would depose that she came back to India only for the respondent/husband. However, she further alleged that during her stay in India, she was manhandled by the respondent and after quitting her job in 2010, she rejoined the same company in Dubai and she delivered a baby on 15.01.2013 in Dubai. It is specific evidence in the chief examination that whenever she came back to India, she always stayed in the respondent's house. During her periodical visit, she usually stayed for two weeks and also stayed for more than a month in the respondent place while her father-in-law was paralyzed in 2015. She further deposed that in June 2016, she left the minor child with the respondent's custody in India for the academic year 2016-2017 and she stayed with the respondent for nearly a year and again she quit the job in 2017 and came back to India and worked in India for the sake of the family.

3.3. P.W.1, in her evidence, has stated that the respondent was ill-



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treated and has made allegations against him by filing a police complaint before the Pallikaranai Police Station. Since the same is pending before the Family Court in the divorce proceedings, I am not expressing any view on that. With regard to the further allegation in the chief examination, the same is extracted as under:

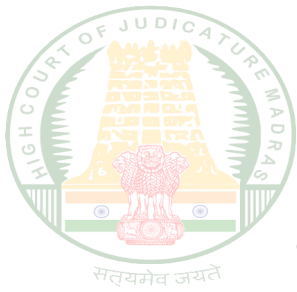
“The respondent had come with his lawyer and others whom I do not know. He asked me to give everything including the 'Mangalsutra' which he cut with scissors and snatched from me. During my visits to the police station, I continued to stay at the respondent's place. It is correct to state that even after having given a complaint against the respondent in the police station, I stayed in the respondent's place. Witness adds: I stayed in the ground floor with my child and the respondent stayed in the first floor. We had no connection with each other. In July 2018, I left for Dubai. In 2010, the respondent had served notice to me for divorce. He had served the said notice asking me to come back to India. I replied that I wanted to live with him.

In the cross examination,

Q: When the child was so frightened of her father, why did you leave her with the respondent for a year?

A: For her to know a father. I had taken a decision to come back to India and so left her with the respondent.

Q: I put it you that you left the respondent only because



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of the Pallikaranai incident and the child had nothing to do with the respondent?

A: All these 10 years, I have taken care of my child's education, happiness, well being and have never stopped her from anything including seeing her father.”

3.4.The respondent entered the witness box as R.W.1 chief examination by way of proof affidavit filed. Since the respondent has not made himself for cross examination, even after sufficient opportunities, the learned Master has closed the respondent side evidence and posted it before the Court for further proceedings and by virtue of the judicial order passed by this Court, further chance was given to the respondent/husband to let in evidence as a final chance and the matter was again referred to the Master Court for recording evidence as per the Original Side Rules and he preferred the proof affidavit on 11.07.2014. However, from the adjudication papers made by the Master, I find that R.W.1 has not turned up for submitting himself to the cross examination. In other words, he has not cooperated with the Court to make himself available for cross examination as to the contents deposited by him.

4.The learned counsel for the petitioner would contend that since the



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respondent-father, who examined himself as R.W.1 by filing proof affidavit

has not turned up before the Court proceedings for the cross examination.

His evidence is to be eschewed.

5(a).This petition is filed for the legal custody of the minor Samirra Gubbala. The welfare of the child is a paramount consideration and hence, this Court proceeds to deal with the case on the available material, keeping in mind the welfare of the minor child. There is nothing worthwhile as a defence in the counter statement of the respondent-father or in the chief examination of the father as R.W.1. As stated *supra*, he did not submit himself for cross examination.

5(b)As per the document, the minor Samirra Gubbala was born in Dubai. Her date of birth is 11.12.2013. She also resides along with her mother. The mother resigned her job in Dubai and came back to India and stayed along with the respondent-father. Due to certain matrimonial discord, she left and rejoined her employment in Dubai. Again she compromised herself and came back to India and allowed the child with the father for one academic year. As extracted *supra*, there is nothing in the cross-examination to disbelieve the evidence of P.W.1 and that she has taken the best efforts to



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have a clear bond with the father and minor. In view of the fact that, R.W.1 was not subjected himself for cross examination.

6.By an order dated 24.09.2024, this Court directed the petitioner/mother to produce the minor child on 15.10.2024 as it was represented that the Family Court case between the petitioner and the respondent is posted on the same day, so that they can appear before both the forums.

7.Pursuant to which, the petitioner along with the minor child Samirra Gubbala were present on 15.10.2024. Mr.A.Ameer, learned counsel representing Mr.G.RM.Palaniappan, learned counsel for the petitioner and Ms.Mrudhula learned counsel representing Mr.M.Madhu Prakash learned for the respondent were also present on that day.

8.Heard the arguments of both the parties.

9.I had an interaction with the minor child in the chamber on 15.10.2024, who expressed her willingness to live with her mother and to continue her education in Dubai. She is now aged about 12 years and she



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expressed that she likes to speak with her father. Hence, the same was conveyed to the learned counsel for the respondent. However, the learned counsel replied that his client was not willing to speak with the minor daughter. Again the minor daughter expressed his willingness to speak to his grandmother. The same reply was again represented by the learned counsel for the respondent. Thereafter, as a third chance, the minor also expressed that she could be permitted to speak to his father and to take his blessings on her birthday. However, the learned counsel for the respondent replied that the respondent-father was not picking up the phone.

10.This Court has taken note of the things that happened during the hearing of 15.10.2024, when the minor daughter was brought to this Court for the personal interaction with him. After having interaction with the minor child and taking note of the entirety of the circumstances and also the specific evidence of the petitioner/mother (P.W.1) and in the absence of any worthwhile in the cross examination to discredit the evidence of P.W.1, coupled with the fact that R.W.1 was not submitted himself for the cross examination and the attitude of the father that was shown to the mother and keeping the interest of the minor which is the paramount consideration in respect of petition filed for guardianship, I am of the considered view that



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the welfare of the minor will be well-safeguarded if the mother is appointed as a guardian as prayed for in the petition.

11.The mother has also filed the necessary application and in the form of a declaration as required under Order XXI Rule 6 of Declaration of Willingness to Act by a proposed guardian, it has also been filed and taken into consideration and hence, I find that the petitioner/mother is the fit person, she has demonstrated her *bona fides*, and she has also taken care of the minor child and she has compromised on many issues for the welfare of the child and the child is also having due respect for the father and inspite of different attitude of the father's reciprocity, this Court is not expressing anything except the fact, ie., already recorded in the proceeding paragraphs.

12.Accordingly, the Original Petition is allowed.

28.01.2025

Index :Yes/No
Internet: Yes/No
NCC: Yes/No
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APPENDIX



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Petitioner's witness:

P.W.1 –Manju Bhargavi

Petitioner's exhibits:

<i>Exhibits</i>	<i>Date</i>	<i>Description of Documents</i>
P1	10.07.2009	Marriage Invitation
P2	12.06.2018	Passport of the petitioner
P3	12.06.2018	Passport of the minor child
P4	15.01.2013	Birth Certificate

Respondent's Witness:

R.W.1-G.Rammohan

28.01.2025

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RMT.TEEKAA RAMAN, J.

sjj

Pre-Delivery Order Made In
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