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O.P.No.199 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
13.08.2025

PRONOUNCED ON
27.10.2025

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**
O.P.No.199 of 2018

M.Bhakkiyaraj

... Petitioner

Vs

S.Maheswari

... Respondent

PRAYER: Original Petition filed under Sections 3, 7, 10, 17, 19 & 25 of the Guardians and Wards Act, 1890 read with Order XXI Rule 2, 3 and 11 of the Madras High Court Original Side Rules praying to grant an appoint the guardianship of the minor child B.Shree Rangeeni, female aged about 3 years presently residing in the custody of the respondent at No.16/ 96, Solai Street, Ayanavaram, permanently pending disposal of the above O.P. and provide such other relief as this Court may deem fit and proper and pass such other further order.

For Petitioner : Mr.K.Elangoo
for M/s.Krishna Law Associates
For Respondent : Mr.K.Gnanasundaram

ORDER

This original petition has been filed by the petitioner, the father of the minor child, B. Shree Rangeeni, seeking to appoint himself as the legal



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guardian and to grant permanent custody of the minor child in his favour.

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2) The case of the petitioner is that he married Mrs. Kalpana, the daughter of the respondent, on 18.01.2013 at Thiruverkadu. Out of the said wedlock, a female child, B. Shree Rangeeni, was born on 03.11.2014. The petitioner contends that his wife, Kalpana, died due to medical complications during her second pregnancy. After her demise, the respondent, who is the maternal grandmother of the minor child, allegedly took away the child using money and muscle power, and is currently in unauthorised custody of the child. The petitioner claims he has been deprived of his parental rights and now seeks to be declared the legal guardian and to be granted permanent custody of the minor.

3) On the other hand, the respondent contends that the petitioner never cared for her daughter Kalpana during her lifetime, and that it was she, the respondent, who provided financial support to both her daughter and the minor child. It is further alleged that Kalpana, while she was alive, had lodged a criminal complaint against the petitioner, which was assigned a CSR number. The respondent also alleges that Kalpana's death was a result of the negligence of the petitioner and his parents. She asserts that the



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petitioner has neither been a loving husband nor a responsible father, and that the present petition has been filed only to create sympathy and divert attention from the pending criminal investigation related to his wife's death. The respondent, therefore, prays for the dismissal of the petition as devoid of merits.

4) Heard Mr. K.Elango, learned counsel appearing on behalf of M/s. Krishna Law Associates, learned counsel appearing for the petitioner and Mr.K.Gnanasundaram, learned counsel appearing on behalf of the respondent.

5) Mr. K. Elango, learned counsel for the petitioner, submitted that the petitioner, being the biological father and natural guardian of the minor child, B. Shree Rangeeni, is entitled to be appointed as her legal guardian and to be granted permanent custody. He emphasized that the minor child was born with certain medical complications, including epilepsy and restricted movement in her right limbs, which require consistent medical attention and care. The petitioner contends that he is better placed to provide for these needs and has already shown his commitment by maintaining a life insurance policy of Rs.5 lakhs in the child's name, and by filing his income



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certificate (Ex.P4) to establish financial stability. He further states that he is living in a supportive family environment and is fully capable of raising the child with the required medical, emotional, and educational support. He further submits that though the petitioner's wife gave a complaint in the Police, the same was conciliated by the police and thus the petitioner and his wife reunited and there is nothing to precipitate the matter again.

6) Learned counsel submitted that in the year 2016, the petitioner's wife Kalpana became pregnant for the second time. During that time, the petitioner went on a pilgrimage to Sabarimala, but was in regular contact with his wife, who informed him about her health condition and subsequent hospitalisation. Unfortunately, both Kalpana and the unborn child passed away due to complications. The petitioner asserts that instead of supporting him during the period of mourning, the respondent and her sons levelled false and unsubstantiated allegations against him and even initiated criminal proceedings under Sections 498A and 304B IPC, which were later altered and committed to the Magistrate Court due to lack of sufficient evidence under Section 304B IPC. He submits that this change in charges indicates the false and exaggerated nature of the accusations made by the respondent. Additionally, the HCP No. 1342 of 2017, filed by the petitioner, resulted in



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this Hon'ble Court directing him to approach the appropriate forum, which he has duly complied with. The order of the HCP marked as Ex.P6.

7) It is further submitted that the respondent has contradicted herself on material facts. In her counter affidavit, she clearly stated that Kalpana's due date was 19.01.2017, implying that the petitioner left for Sabarimala despite being aware of the risks involved. However, during her deposition, she denied knowledge of the due date, thus undermining her own claim and weakening the credibility of her version. The petitioner argues that this inconsistency reveals the respondent's attempt to distort facts to suit her case. He further states that the respondent forcibly took away the child from his custody and has since denied him any access. Given the respondent's advanced age, health conditions, and her use of the child as a tool for vendetta, the petitioner submits that he alone is the fit and proper person to be appointed as the minor's legal guardian and to be granted her permanent custody, in the best interest of the child.

8) Mr. K. Gnanasundaram, learned counsel for the respondent, opposed the petition and submitted that the petitioner had been negligent and indifferent toward his wife, Kalpana, and the minor child even during



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Kalpana's lifetime. He contended that despite Kalpana's second pregnancy being in a critical stage, with the expected due date being 19.01.2017, the petitioner chose to go on a pilgrimage to Sabarimala, ignoring the fragile health condition of his wife. It is pointed out that Kalpana repeatedly communicated with the petitioner about her deteriorating condition and requested him to return, yet he failed to do so. He returned only after her demise and saw her in the mortuary. The RDO report, relied upon by the respondent, records that Kalpana had contacted the petitioner on multiple occasions seeking his support, but the petitioner failed to act responsibly. Moreover, it is contended that the petitioner and his family did not even receive Kalpana's body or perform her final rites, reflecting a complete lack of compassion and responsibility.

9) Learned counsel further submitted that the RDO's inquiry found elements of dowry harassment, and the death of Kalpana was reported in the media, a copy of which has been filed as Ex.R1. The criminal case in Crime No. 21 of 2017 was initially registered under Section 174 IPC and subsequently altered to Sections 498A and 304B IPC. The charge sheet is yet to be filed. It is contended that the present petition is merely an attempt by the petitioner to deflect attention from these serious criminal proceedings



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and to garner sympathy. The respondent also referred to a complaint made by Kalpana during her lifetime, which was assigned CSR No. 149 of 2016, reflecting a history of cruelty and neglect by the petitioner and his family. Therefore, it is submitted that the petitioner is attempting to evade legal consequences and shift the narrative by seeking custody of the child after having neglected both wife and daughter during their vulnerable times.

10) It is further contended that the petitioner has made no financial contribution toward the upbringing of the minor child and has shown no genuine concern for her welfare. Even during a brief period of interim custody, the petitioner is alleged to have acted irresponsibly, including feeding the child Biriyani, which caused her discomfort, and taking back toys after the visit, causing distress to the child. The respondent, in contrast, is financially stable and emotionally invested in the child's well-being. She has raised the child since birth and has the capability to support her education and health needs. Relying on the decision in **Joshi v. Pradeep Kumar**, reported in **AIR 1992 SC 1447**, learned counsel emphasized that custody may be awarded to maternal relatives in the best interests of the child when the father's conduct is questionable. Hence, it is prayed that the petition be dismissed as devoid of merit and not in the paramount interest of



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the child.

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11) I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

12) The father of the minor child had approached this Court to grant him custody of the minor child. The undisputed facts are that the mother of the minor child had died during January 2017. A criminal case has also been registered as against the petitioner and his relatives which now stands altered to Section 498 A IPC and is admittedly pending for framing of charges. The minor child who is aged about 11 years now has been admittedly under the care and custody of the respondent who being the maternal mother from 2017 ie., from the date of death of the wife of the petitioner and the mother of the minor child. The pendency of the criminal case particularly under Section 498 A IPC impacts the mind of this Court in granting guardianship and custody of the minor child in favour of the petitioner, for the reason that if he is convicted, the minor child would be left without a custodial guardian. Even though, this Court is conscious of the fact that the father being the natural guardian has a preferential right over the custody of the minor child, but, keeping in view of the case pending against the petitioner under Section 498A IPC, this Court is not inclined to grant custody of the minor child by appointing the petitioner as the guardian. However, this



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Court is of the view that if the petitioner gets acquitted and also wins over the child's love and affection, he could be at liberty to move this Court for the modification of the order.

14) For the aforesaid reasons, the Original Petition stands dismissed and

a) The respondent is appointed as a legal guardian of the person and property of the minor.

b) The petitioner is permitted to have the visitation right over the child on every Sunday and he would be entitled have the custody of the child between 10.00 am and 4.00 pm on the said date.

c) He would also be entitled to have the visitation right over the minor child during the major festivals and on which day he can have the custody of the minor child between 2.00 pm and 6.00 pm.

d) He would also be entitled to have the custody of the minor child's 50% of the summer vacation and extended holidays.

e) He is also at liberty to move this Court in the event of his acquittal in the criminal case for the



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modification of the order.

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Index :Yes/No

Speaking order: Yes/ No

Neutral Citations: Yes/ No

List of witnesses examined on the side of the petitioner:

PW1- Mr.M.Bakkiyaraj

List of documents marked on the side of the petitioner:

Ex.P1	The photocopy of the Aadhaar card of PW1 bearing No.3924 3397 3186 (Marked after comparing and verifying with the original).
Ex.P2	The computer generated birth certificate of PW1's daughter B.Shree Rangeeni, who born on 03.11.2014.
Ex.P3	The computer generated death certificate of PW1's deceased wife Mrs.Kalpana, who died on 05.01.2017.
Ex.P4	The original pay slip of PW1 for the month of November 2017.
Ex.P5	The photocopy of R.D.O. Report dated 06.03.2017.
Ex.P6	The photocopy of Order dated 10.08.2017 passed in H.C.P.No.1342 of 2017 by this Hon'ble High Court.
Ex.P7	The photocopy of Order in Crime Original Petition No.16510 of 2017 dated 29.08.2017 passed by this Hon'ble High Court.

List of witnesses examined on the side of the Respondent:

RW1 – Mrs.S.Maheswari



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List of documents marked on the side of the Respondent:

Ex.R1	The copy of Paper publication effected in one issue of Tamil daily “Dhinathanthi” dated 08/01/2017 (counsel for the petitioner raised objection to mark this document. Objection is noted. This document is marked subject to its admissibility, proof and relevancy).
Ex.R2	The original vehicle particulars owned by S.Kalpana dated 12/01/2018.
Ex.R3	Original vehicle insurance policy dated 28/02/2019.

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