



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-12-2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

OP No. 337 of 2024

1. G.Navaneetha Kumar
S/o. R.Govarthanan, No.33, Block - 1,
Flat 4F, Ceebros Orchid Apartments,
Velachery Main Road, Velachery,
Chennai 600 042.

Petitioner(s)

Vs

1. N.C.Pavithra
W/o. G.Navaneetha Kumar, No.14,
Mullainagar 8th Street, Anna Nagar
West, Anna Nagar, Chennai 600 040.

Respondent(s)

PRAYER: This Original application has been filed under Section 25 of Guardian Wards Act read with Order XXI Rule 2 and 3 of the Original Side Rules praying that the Petitioner Dr.G.Navaneetha Kumar, S/o. R.Govarthanan, father of the minor children namely N. Chathvick aged 4 years and N. Rianshi, infant of 6 months may be appointed as guardian of the minor children.

For Petitioner(s): Ms. S.Thamizharasi

For Respondent(s): M/s.Poonam Chopra

ORDER

This Original Petition has been filed by the petitioner, who is the father of



the minor children to appoint him as guardian for the minor children and to grant custody of the minor children to the petitioner.

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2. The *case of the petitioner* is that the marriage between the petitioner and the respondent was solemnised on 27.08.2017 as per the Hindu Rites and Customs at Chennai. Out of the wedlock, a son and a daughter namely N. Chathvick and N. Rianshi born on 23.09.2019 and 16.10.2023 respectively. Due to some misunderstanding between the petitioner and the respondent, they are living separately. In the month of October 2021, due to the petitioner's brother's tender child, the respondent yelled at the petitioner and went back to the respondent's parental house. During that time, the respondent took 20 thyroid tablets and felt asleep and she was taken to hospital and became well after treatment. The respondent was also in the habit of threatening the petitioner that she will commit suicide. In May 2022, the respondent came back to matrimonial house after panchayath held by the parents. When the respondent gave birth to a female baby on 16.10.2023, she liked to stay in matrimonial home along with the petitioner. The mother of the respondent used to come to Velachery from Anna Nagar every day to take care of the respondent. Thereafter, the respondent employed a maid and when the petitioner questioned about the troubling of her mother, the respondent fought with the petitioner and threw the 40 days old child to the petitioner and went to the respondent's parents house on 27.11.2023 night by packing all her clothes and jewels.



Thereafter, the petitioner was unable to see the infant without a mother and the respondent was called and she also came along with her parents and on 29.11.2023, the respondent took back the infant of 40 days old with her and went to her parents house. The petitioner is very affectionate towards the respondent and their children. The elder son of the petitioner aged 4 years is also under the custody of the respondent. The petitioner is always ready to live with the respondent, but the respondent refused for the same. Both the children requires father's care and attention. The respondent only withdrew from the conjugal rights and went to her parents house. The petitioner's 1st child was picked up by the petitioner's mother every Friday evening and dropped by the petitioner on every Sunday night. The 2nd infant was given custody to the petitioner on 09.03.2024 and she was under the care and custody of the petitioner up to 08.04.2024. The petitioner received a call on 08.03.2024 from the School, where the 1st child is studying and the petitioner was told that the School will give Transfer Certificate to the 1st child. The respondent shifted the residence from Anna Nagar to Perungudi and by taking the transfer certificate from the School to admit him in a School near Anna Nagar. The School, where the 1st child is now studying is very good and the petitioner has spent Rs.1.5 lakhs towards registration fee at the time of admission. In order to take revenge against the petitioner and to deprive the custody of the child to the petitioner, the respondent has shifted her residence and changed the School. The shifting of the School and residence, will affect the mental and physical growth of the



child and the child will be deprived of a good school, cordial and atmosphere and an environment. Therefore, the petitioner has filed this original petition.

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3. The *case of the respondent* is that the respondent denies all the allegations made in the application except that are specifically admitted in the counter. The marriage between the petitioner and the respondent and the children born to them are admitted. The petitioner and the respondent have been living separately since 29.11.2023 due to physical abuse and instances of cruelty caused by the petitioner and his parents. The petitioner's demand for the custody of the minor child is driven by ulterior motives and not by the best interests of the children. The minor children are at tender age and requires mother's love, care and attention. The separation of children from the mother would cause irreparable harm to the children. The mother is taking care of the children and she has no adverse interest against them. The petitioner's home environment, influenced by his parents has been a source of distress and instability, which would not be conducive to the growth of the minor children and happiness. In order to maintain good health and education of the minor children, they shall not be separated from their mother and both the children are aged below 5 years, thereby, there custody should be with the mother and the petition is liable to be dismissed.



4. The learned counsel appearing for the petitioner would submit that the petitioner is the father of the minor children namely N. Chathvick aged 4 years and N. Rianshi, infant of 6 months and now due to the misunderstanding between the petitioner and the respondent, the respondent left from the matrimonial home and residing separately with the children and the petitioner is the biological father and natural guardian and he has to be appointed as 'guardian' to the minor children and the custody of minor children has to be given to the petitioner and the petitioner has all facilities to bring the children in a good manner with all respect. Therefore, he has filed this petition. In order to prove the case of the petitioner, he examined PW1 and Ex.P.1 to Ex.P.11 were marked. On the side of the respondent, RW1 was examined and no documents were marked. The petitioner through the evidence of PW1 and the documents from Ex.P.1 to Ex.P.11, proved his case. Therefore, the custody of the minor children has to be given to the petitioner and he has to be appointed as 'guardian' of the minor children and therefore, prayed to allow this petition.

5. The learned counsel appearing for the respondent would submit that the children are aged below 5 years and as per Section 6 of Hindu Minority and Guardianship Act, the custody of the minor children should be with the mother and there are no grounds raised by the petitioner to separate the minor children aged below 5 years from the custody of the mother. The children are very comfortable with the mother and the mother is only taking care of the minor



children and from their childhood, they are growing with the mother and at this stage, if the custody of the children is given to the petitioner, the future of the minor children will be affected. Now the mother is giving good education to the 1st child and the 2nd child is at tender age and therefore, the evidence of PW1 and the documents are no way helpful to decide the case in favour of the petitioner and the petitioner has not established anything adversely against the respondent, whereas he himself admitted that the 1st child is studying in a School in good atmosphere and RW1 also has clearly stated about her case. Therefore, if the children are entrusted into the custody of the petitioner, their future will be spoiled. Therefore, this original petition is liable to be dismissed.

6. Heard both sides and perused the entire materials available on record.

7. In this case, there is no dispute in respect of the relationship between the petitioner and the respondent and also the children born to them. Admittedly, both the children are below 5 years and both the children are growing under the custody of their mother. The petitioner in the petition, nowhere stated about any adverse remarks in respect of the custody of the minor children with the respondent and the children are being taken care by the respondent mother. Since the children are growing with the mother from their childhood and they are at tender age, at this stage, they cannot be separated from their mother, without any valid reasons. It is well settled law that as far as the custody of the



minor children are concerned, the welfare of the minor child has paramount consideration. It is also an admitted fact that the children are under the care and custody of the respondent / mother and the PW1 also in his cross examination admitted that the respondent never cared about the female child and she took the male child and left the house. After one day, he asked her parents to come and take the child so that she can get mother's feed and since the child needs mother's feed for six months for her health, he gave the child.

8. Further, the RW1, who is a mother of the minor children has deposed about the custody of the children and she stated that it is in the best interest of the children at tender age, they shall not be separated from her and to remain in the guardianship and custody who can provide love, care and safe stable environment which is essential for their upbringing. Therefore, from the evidence of RW1, it is clear that the children are under the care and custody of mother and they are very comfortable with their mother and there is no any adverse interest as against the minor children. There are no evidence that the mother is not capable to have custody of the children, where the children are now under custody and without any evidence that the mother is not capable to maintain the children, it is not appropriate to allow this application. However, already this Court passed an interim order and the petitioner was granted visitation rights on every Sunday and the same order can be continued.



9. Accordingly, this *original petition is dismissed*. However, the petitioner is entitled to the visitation rights on every Sunday. **The petitioner may collect the male child namely N. Chathvick from the respondent's house on every Sunday at around 8 a.m. and leave back the child at around 2 p.m. at the respondent's house.**

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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