



WEB COPY



O.P. No.286 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

O.P. No.286 of 2023

T.Karthik

... Petitioner

Vs

V.Saranya

... Respondent

PRAYER: Original Petition is filed under Section 25 of the Guardians and Wards Act read with Order XXI Rules 2 and 3 of Madras High Court Original Side Rules, 1956 praying to grant permanent custody of the Minor K.Mohit born on 31.12.2015 to the petitioner.

For Petitioner : Mr.N.Kalidoss

For Respondent : Mr.V.Rajasekar

ORDER

This petition has been filed by the petitioner / father of the minor child for grant of permanent custody of the minor child K.Mohith to the petitioner under Section 25 of the Guardian and Wards Act.



O.P. No.286 of 2023

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

(i) The marriage between the petitioner and the respondent was solemnized on 18.01.2015 as per Hindu rights and customs at Kundrathur Main Road, Chennai and the said marriage subsequently registered on 18.03.2015. Both the petitioner and the respondent resided as husband and wife in the residence of the respondent at Old No.60/2, New No.64/2, Subramania Swamy Koil Street, Saidapet, Chennai and out of the wedlock, a male child, namely Mohith was born on 31.12.2015. The petitioner is an engineer and he is the only person to take care and support his parents. The respondent's parents also started complaining about the petitioner's parents' house that the amenities are not proper.

(ii) The respondent always tried to detach the petitioner from his parents, but the petitioner for the welfare of the child adjusted with the respondent, while so, in the month of November, 2016, the respondent left Thoraipakkam home without informing to the petitioner. When the petitioner called the respondent she informed that she will not come, since the petitioner had fought with her and the respondent's father also threatened the petitioner. Thereafter, they re-united, while so during September, 2017, both of them moved to Adambakkam rental house. The respondent did not like that house, at later point of time, the petitioner came to know that the



O.P. No.286 of 2023

respondent was taking hormone tablets regularly and she had some mental health issues.

WEB COPY

(iii) While so, on 23.12.2022, the respondent, left the matrimonial home with the child without valid reasons and now she is residing at her parents home. The petitioner had taken all efforts through his close relatives, but the respondent refused to return but making false allegations, thereafter, the petitioner caused legal notice dated 05.01.2023 and the respondent issued reply notice dated 12.01.2023 with false allegations and the petitioner also issued re-joinder notice dated 28.03.2023. Thereafter, the respondent made false complaint against the petitioner before W20, All Women Police Station, Saidapet on 02.02.2023, after enquiry and as per advise of the police, the respondent allowed the petitioner to see the child and thereafter, the respondent refused to show the child and for the past four months, the petitioner did not see his son and the child has been deprived his care, affection and protection. The respondent and her family members blocked the petitioner's access towards his son, therefore, the petitioner has filed this petition.



3. The case of the respondent is as follows:-

(i) The petitioner has filed this petition with ulterior motive to harass the respondent. The minor child is currently residing with her in a stable and nurturing manner and the child is well settled in his present school at Ponvidhyashram Group of Senior Secondary Schools. The petitioner having been negligent and indifferent towards the child upbringing for the past, cannot claim custody. The respondent came to know that the petitioner has got some issues relating to Obsessive-Compulsive Personality Disorder (OCPD) owing to which behaviour patterns with the respondent are odd towards often different, among such other things, the respondent, on several occasions took the petitioner for consultations with Doctor and subsequently for mediation.

(ii) The petitioner is in the habit of fighting even for trivial issues. The petitioner has directed the respondent to reside at Thoraipakkam home only to avoid the visitation rights of respondent's family. The parents of the respondent are age old, who never indulge in threatening the petitioner, as alleged in the petition. The petitioner also used to beat the child, if the child is not obeying his command. The petitioner had some physical issues for which, the recovery treatment was advised by the Doctor, therefore, he is undergoing treatment. The petitioner not even spent a minimum of 15



O.P. No.286 of 2023

minutes to the child and not shown any affection towards his child and the child was frequently longing for the father's love and affection.

WEB COPY

(iii) It is not correct to state that the respondent and his family members blocked the access towards the petitioner's son, but the petitioner never had occasion to come forward to see the child, as a prudent father. The respondent has been ill-treated and harassed by the parents of the petitioner, there are no grounds to entrust the custody of the child to the respondent and the petition is liable to be dismissed.

4. The learned counsel appearing for the petitioner would submit as follows:-

(I) The petitioner and the respondent are husband and wife and their marriage was solemnised on 08.01.2015 and due to wed lock, a male child, namely, Mohith was born to him on 31.12.2015 and thereafter, the respondent very often made quarrel with the petitioner and left the matrimonial home without any valid reasons along with the child. Thereafter, the respondent refused to show the child to the petitioner, who is the father. The parents of the respondent also threatened the petitioner and thereby the petitioner was unable to see the child, therefore, filed this petition. In order to prove the case of the petitioner, he was examined as



O.P. No.286 of 2023

P.W.1 and marked Exs.P.1 to P.10 and on the side of the respondent, R.W.1 was examined and Exs.R.1 to R.19 were marked.

WEB COPY

(ii) The respondent denied the allegation evasively. The respondent also initiated proceedings under protection of women from District Violence Act. R.W.1 in her cross examination stated about criminal complaint lodged by her and also admitted that the petitioner and the respondent together went to various places along with child. This shows that the petitioner actively participated in family outing and the welfare of the child. Further, R.W.1 herself admitted that she did not want to show the child, either to the petitioner or to his parents, because they always used the kid to blackmail the respondent and her family members and also refused for the visitation rights to the petitioner. This shows the intention of the respondent.

(iii) Further, the child is under the custody of the respondent and nobody have taken care the child in the respondent's house and the respondent is also working woman. In this context, the respondent categorically admitted that her father is only taking care of the child for dropping and picking up the child from the school. The respondent also levelled allegation against the petitioner that he has Obsessive-compulsive Personality Disorder (OCPD) and without any documents, she made false



allegations and the respondent is in the habit of disobeying the order of this Court and inspite of the order passed by this Court to see the minor child, the respondent disobeyed the order, therefore, the petitioner has proved his case with sufficient evidence and the custody of the minor child has to be granted to the petitioner.

5. The learned counsel for the respondent would submit as follows:-

(I) The marriage between the petitioner and the respondent and the child born to them, are admitted. The petitioner even after birth of their son, Mohith, not shown any affection or moral support. During severe flood, the petitioner forcibly evicted the respondent's sister and her family, who had shelter at their residence and at the time, the petitioner was suffering from Obsessive compulsive Personality disorder. The petitioner prevented the celebration of child's first birthday to prevent the respondent's family from attending function. The petitioner did not allow the respondent's parents to visit their grand child and he moved the family to Thoraipakkam, later to Adambakkam specifically to avoid the visit of the respondent's family.

(ii) The petitioner made baseless allegations that the respondent visited friends and relatives without permission, though he had authorised those visits. The respondent never prevented the parents of the petitioner



O.P. No.286 of 2023

from seeing their grand son. The petitioner currently residing alone in Adambakkam Flat visiting his parents only for child visits. The respondent secured the child's school admission and the child is under care and custody of the respondent. The petitioner never acted as a caring and dutiful father to the minor child. This Court granted order of visitation rights on First and Fourth Saturday, however, the petitioner misused this liberty showing negligence towards custody while leaving the child unattended while watching Television and ordering food from outside despite the known allergies to the child. The visitation right of the petitioner was cancelled due to his disobedience of the Court order, specifically his cessation of Rs.5,000/- as monthly maintenance, which was paid through bank as maintenance, wherein the payments were made only for three months.

(iii) The child has expressed his reluctance to visit the petitioner and the petitioner now attempted to see the child as caring father, instead engaging in hostile confrontations and demanding court ordered assess only at his residence. Since the petitioner is residing alone in his flat, nobody is available to take care of the minor child and the parents of the petitioner are also residing separately, therefore, the petitioner is not entitled for relief of either permanent custody or visitation rights and the petition is liable to be dismissed.



O.P. No.286 of 2023

6. Heard the learned counsel appearing on both sides and perused the entire documents placed on record. Upon hearing both sides and perusing the records, the point for determination in this petition is:

“Whether the petitioner is entitled to permanent custody of the minor child, namely, K.Mohit?”

7. In this case, there is no dispute with regard to the relationship between the parties and the minor child born to the petitioner and the respondent. Now the petitioner's child is aged about 10 years and under the custody of the respondent. Due to the misunderstanding between the petitioner and the respondent, they were separated and residing separately. According to the petitioner, the respondent without any valid reasons left the matrimonial home by taking child to her parents home, even after efforts taken by the petitioner, the respondent refused to live with the petitioner and the respondent not even allowed the petitioner to see the child and the petitioner, being father of the child is entitled to seek permanent custody of the minor child.

8. The respondent also admitted the relationship and according to the respondent, due to behaviour and harassment of the petitioner and his



family members, the respondent left from the matrimonial home along with the child. The petitioner has never taken care of the child and he very often used to beat the child and the child also very reluctant to see the petitioner / father and now the child is very comfortable with the respondent and the child is studying in a reputed school, therefore, custody of the child need not be disturbed and the petitioner has no interest in the welfare of the child.

9. In order to prove the case of the petitioner, he was examined as P.W.1 and marked Exhibits P.1 to P.9 and on the side of the respondent, R.W.1 was examined and Exhibits R.1 to R.19 were marked.

10. P.W.1 in his evidence stated about the disputes between the petitioner and the respondent and also stated that the child is under the care and custody of the respondent and the respondent has not allowed the petitioner to see the child and the petitioner has not stated anything about the dis-entitlement of the respondent to have the custody of the child. All the allegations against the respondent are pertaining to matrimonial disputes. There is no sufficient evidence adduced by the petitioner to show that he is capable to maintain the minor child and the respondent has no any means or incapable to maintain the minor child.



O.P. No.286 of 2023

11. Per contra, the evidence of the respondent, R.W.1 indicates that the minor child is under the care and custody of the respondent and she only admitted the child in a school and now the child is studying in a reputed school and child is very comfortable with the mother and the child is also very reluctant to see the petitioner / father.

12. This Court also enquired the child about his willingness to go along with the petitioner / father, but the child is not willing to go with the father, therefore, considering the welfare of the minor child, it is not appropriate to grant permanent custody of the minor child to the petitioner. It is true that the petitioner is the biological father of the minor child, however, it is well settled law that as far as custody of the minor children is concerned, welfare of the child is paramount consideration, now the child is growing with the mother and not even completed 10 years, at this stage, it is not appropriate to separate the child from the mother. However, the petitioner / father can see the child and already this Court also granted interim visitation rights to the petitioner on every Sunday from 9.00 a.m., till 06.00 p.m.. Therefore, in the interest of justice, it is appropriate to grant visitation rights to the petitioner.



O.P. No.286 of 2023

12. In view of the same, this petition is dismissed in respect of the permanent custody, at the same time, the petitioner is entitled to visitation rights. This Court already passed an interim order dated 30.04.2025 '*that the petitioner / father is permitted to have the custody of the minor child, on every Sunday from 09.00 a.m. till 06.00 p.m., and the respondent shall not interfere with sch visitation, however, the petitioner / father shall also have video conferencing with the minor child on every Wednesday between 7.00 p.m., to 7.30 p.m., the respondent shall provide uninterrupted video conferencing platform for such video conferencing*', therefore, the petitioner is entitled to the same visitation rights.

03.12.2025

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

APPENDIX:

List of Petitioner side Witnesses:

PW1 : Mr. T.Karthik

List of Petitioner side Documents:

Exhibit No.	Date	Description of Documents.
Ex.P.1.	18.01.2015	Original Marriage Invitation
Ex.P.2	05.01.2022	Office copy of the legal notice
Ex.P.3	12.01.2023	Reply notice sent by the respondent's counsel for Ex.P.2



O.P. No.286 of 2023

Ex.P.4.	28.03.2023	Office copy of the rejoinder notice sent by counsel for the petitioner to the counsel for the respondent.
Ex.P.5	-	Photocopy of Aadhar card of the petitioner
Ex.P.6	-	True copy of complaint, CSR, statement of both petitioner and respondent received through RTI from the All Women Police at Saidapet dated 26.12.2023
Ex.P.7	-	(Series 15 nos) are the photographs taken by the petitioner with the respondent and the minor child.
Ex.P.8	-	Computer generated birth certificate of minor son K.Mohit
Ex.P.9	-	Certificate under Section 63 of BSA

List of respondent side Witnesses:

RW1 : Mrs.V.Saranya

List of Respondent side Documents:

Exhibit No.	Date	Description of Documents.
Ex.R.1.	-	Photocopy of Aadhar card of minor son K.Mohit
Ex.R.2	-	Photocopy of Aadhar card of minor son K.Mohit
Ex.R.3	01.01.2024 to 05.08.2024	Computer generated statement of account for the period being account no.5450843442 stands in the name of saranya viswanathan
Ex.R.4	-	Computer generated certificate issued by Ericson India Global Service Pvt., Ltd., on 31.08.2017 stating that the respondent is working as Solution integrator from May 2014 to 31.07.2017 and resigned on 31.07.2017



Ex.R.5	-	Computer generated offer of appointment dated 26.11.2018 issued by Ericson India Global Services Pvt., Ltd.,
Ex.R.6	-	CD of the child along with receipt dated 07.08.2024 issued by Little Star Studio (Digital)
Ex.R.7	03.03.2018	Invoice issued by one Mr.B.Saroj Jewellery, Saidapet, Chennai
Ex.R.8	24.08.2018	Certified copy of the construction agreement between M/s G.K.Constructions as 1 st party and Mr.Karthik and Mrs.V.Saranya as 2 nd party
Ex.R.9	18.08.2020	Digital copy of e-mail sent by petitioner to respondenet
Ex.R.10	-	Digital copy of whatsapp message sent by the petitioner to the respondent
Ex.R.11	05.08.2020	Digital copy of e-mail sent by petitioner to the respondent
Ex.R.12	-	Original CSR bearing no.2/23 given by All Women Police Station, Saidapet, Chennai for the complaint given by the respondee
Ex.R.13	-	Photocopy of certificate of participation given to minor Mohit by SIP academy on 07.08.2023 for his participation in SIP Arithmetic genius All India inter-school contest 2023
Ex.R.14	-	Photocopy of the certificate issued to minor son K.Mohit on 28.09.2023 by India Records Academy for his participation in the Longest Slokas Recitation Marathon (Team)
Ex.R.15	-	Photocopy of the certificate issued to minor son K.Mohit on 01.10.2023 by Tamilan Books of Records for his participation in performing Squat Challenge



WEB COPY



O.P. No.286 of 2023

Ex.R.16	-	Photocopy of the certificate issued to minor Son K.Mohit on 03.10.2023 by Asian Record Academy for his participation in the largest Origami Houses Mosaic
Ex.R.17	-	Photocopy of Medal awarded to minor Son K.Mohit by India Records Academy
Ex.R.18	-	Computer generated school fee receipt paid by the respondent to minor son on 01.04.2024 to Sree Narayana Mission Senior Secondary School, Chennai
Ex.R.19	-	Certificate filed by the respondent under Section 63 of Bharatiya Sakshya Adhiniyam 2023

03.12.2025



WEB COPY



O.P. No.286 of 2023

P.DHANABAL, J.,

ssd

O.P. No.286 of 2023

03.12.2025