



O.P.No.396 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON 04.03.2025	PRONOUNCED ON 30.04.2025
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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

O.P.No.396 of 2023

Dr.Babu ... Petitioner
Vs.

Dr.Seethalakshmy ... Respondent

PRAYER: Original Petition filed under Sections 3, 7 to 10 & 25 of the Guardians and Wards Act, 1890 read with Order XXI Rules 2 and 3 of the Madras High Court Original Side Rules praying for the following relief:-

i) to grant custody of the minor child, Sachin born on 02.02.2017 to the petitioner;

ii) to appoint the petitioner as the legal guardian of the person of his minor child Sachin born on 02.02.2017 and

iii) to pass any such other reliefs

For Petitioners : Mr.V.V.Sairam

For Respondent : Mr.R.Sivakumar



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ORDER

This petition is presented by the father of Minor Child Sachin to appoint him as legal guardian and to grant permanent custody of the child.

2) It is the case of the petitioner that the petitioner and respondents are husband and wife married on 06.10.2011 at Puducherry. Out of their wedlock two minor children were born one is Kishore and the other is Sachin. The petitioner and respondent are separated and living separately since 2018. Both the children also separated along with their parents and the first child lives with the father/the petitioner and the second child with the mother/ respondent. A divorce petition was filed by the petitioner herein in HMOP No.227 of 2021 and the same was ordered Exparte. The petitioner preferred this petition on the ground that the respondent who is the mother of the Minor Child Sachin was working in Thiruvannamalai and not taking care of him and left the child along with her parents.

3) It is the case of the respondent that the petitioner filed the above petition with malevolent and malicious intention of subjecting the respondent to unwarranted harassment, agony and anguish. The respondent has not separated from the petitioner and the petitioner and his mother



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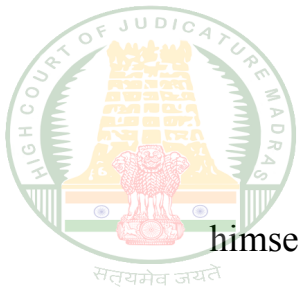
dropped the respondent in her parent's house during her second pregnancy.

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Based on the false promise of the petitioner, the respondent has withdrawn the case for the happy reunion of the family. Though the petitioner did not support the respondent, the respondent managed to take care of the family and herself. The respondent never refused the petitioner to visit the Minor Child Sachin. The petitioner has taken 5 years time to file this petition to suit his needs.

4) Heard Mr.V.V.Sairam, learned Counsel appearing for the petitioner and Mr.R.Sivakumar, learned Counsel appearing on behalf of the respondent.

5) Mr.V.V.Sairam, learned counsel for the petitioner submits that the petitioner and the respondent are doctors who were married on 06.10.2011 at Puducherry. He further submits that the petitioner and the respondent begotten two male children one is Kishore who was born on 06.07.2012 and other is Sachin who was born on 02.02.2017. He further contends that various complaints have been filed by the petitioner against the respondent and vice versa. He further contends that C.C.No.1500206/2015 was filed before the JM-III, Puducherry for the complaint given by the petitioner on 22.06.2012. He further contends that in a complaint given by the respondent,



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himself and his parents were acquitted in C.C.No.60 of 2013 before the CJM, Puducherry and the same was dismissed on 17.12.2015. He further submits that an H.M.O.P.No.354 of 2012 before the family court at Puducherry was filed by the petitioner and disposed of based on a memo of compromise. He further contends that the respondent worked in Primary Health Centre at Chetpet in Thiruvannamalai District and visited the Petitioner's residence at Ayyappanthangal in Chennai at weekends only without giving proper care and attention for the minor children. He further contends that the respondent continuously pestered the petitioner to withdraw the criminal case. He further submits that the respondent left both the children with the petitioner in Chennai and went to her parents house in Puducherry on 14.05.2018. He submits that on 06.07.2018, the respondent took younger son Sachin along with her and Kishore refused to go with the respondent.

6) He further submits that the respondent once again filed vexatious and false criminal complaint against the petitioner and his parents for dowry harassment and an FIR No.2 of 2019 was registered and the same was published in Tamil Murasu and Dhinamalai on 17.07.2019 and on 18.07.2019, to tarnish the reputation of the petitioner. He further contends



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that the petitioner approached this Hon'ble Court to quash the FIR and the said FIR was quashed on 17.03.2023 in CrI.O.P.No.22430 of 2019. Further, the respondent filed DVC No.100 of 2020 before the JM-III, Puducherry against the petitioner on 21.12.2020. The said DVC case was dismissed for default of the respondent on 07.10.2022 since, the respondent has not appeared before the JM-III Court. In furtherance to that, the petitioner filed Divorce petition in HMOP No.227 of 2021 before the Sub-Judge Poonamallee for peaceful life. The divorce was granted Exparte on 02.03.2023. He further submits that Minor Child Kishore who is with the petitioner is getting proper education and being brought up in friendly atmosphere, he is missing his brotherhood relationship with Minor Child Sachin who is with the parents of the respondent.

7) He further contends that the petitioner and the respondent have been separated for more than five years since May, 2018. He further contends that the minor child Sachin was with the respondent's parents since 2018. She has never cared or showed proper affection for Sachin and her parents are alone supervising Sachin. Minor child Sachin misses his parental care and also the love and affection of his elder brother Kishore. Further, the respondent and her relatives are still not allowing the petitioner and the first



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child to see the minor child Sachin. He further submits that he was bringing up the first child in an exceptional, world class, child centric environment and seeks to ensure the same for the second child. He further contends that the petitioner helps in the overall development of the first son and in the context, he relied upon Ex.P17 and Ex.P18. He contends that the petitioner has taken LIC Child Plan Investment Policy for Rs.25,00,000/- which was marked as Ex.P19. He further contends that during Cross-Examination, the respondent has admitted that she is unable to attend the extracurricular activities of Sachin as well as that she has not taken any child plan investment or medical insurance policy. He contends that the petitioner can be appointed as guardian for the minor and the minor will live with the care of the father along with the support of elder brother and same will create opportunities for the child Sachin to lead a life with excellent atmosphere and he will shine in future with great education at reputed school. He further submits that the Minor child will be provided with all amenities and facilities to improve the special skills and extracurricular activities. Further, all these facilities are available within the premises of the apartment of the petitioner to lead a successful life along with the support of Petitioner and brother Kishore. Hence, he prays to allow the original petition.



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8) Countering the arguments of the learned counsel for the petitioner,

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Mr.R.Sivakumar, learned counsel for the respondent submits that the petitioner has filed this petition with malevolent and malicious intention of subjecting the respondent to unwarranted harassment, agony and anguish. He further submits that the petitioner is the person who dropped the respondent in her parent's house and failed to take care of her during pregnancy. He further submits that at the time of first divorce petition, she was taking care of the first male child and suffered a lot. He submits that the petitioner was not a dutiful husband and did not support the day to day maintenance of the family. He further submits that without any option the respondent has joined the job to run the family. But the petitioner did not like the same and has given pressure to the respondent to resign the job often. He further submits that though the respondent was pregnant for a second time, she has visited the first child twice or thrice in a week. He further submits that the respondent has taken permission from the authorities to take care of the child in the evening to teach the child. He further submits that the respondent has taken care of herself, her child and her parents so the petitioner's feelings towards the child is a clear eye wash.

9) He submits that the respondent could not cross examine the



petitioner, but she clearly stated her situation in her cross examination. He further submits that the petitioner has not established that he has enough time to maintain two children in his custody. He further submits that the government has appointed her as Senior Resident in General Surgery at Government Villupuram Medical College. He further submits that the respondent has ample time to maintain her child. He further contends that the above mentioned facts are present developments so the respondent could not file the same along with the counter and the Same is filed along with the written arguments. Hence, he prays to dismiss the petition.

10) Considered the arguments of both sides and perused the materials available on record.

11) The petitioner had let in evidence asserting his capability in providing a harmonious and better life for the minor child along with his brother. The respondent had not cross examined the petitioner to discredit his evidence. Eventhough, the respondent claims to be the doctor, having all essentiality to provide all the necessities to the minor, she had not placed on record any material, as to how atleast she proposed to give the minor in her custody the necessities for his upgrowth. She had admitted that she had



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being working as Government Doctor and in course of her employment, she was transferred to various places by her employer. She had also admitted that she was unable to attend to the extra-curricular activities of the minor. She had also deposed that during her post graduation course, she was unable to take care of her child.

12) There is a categorical admission by the respondent that there is no brotherhood bond between the siblings. Eventhough, she claimed for the custody of the elder child in DVC proceedings, she had admitted that the said DVC proceedings had been dismissed for default and she had not taken any further steps for seeking custody of the minor son who is in the custody of the petitioner. She further claims that it would be incorrect to state that because of the exigency of her service, she was unable to take care of the minor child who is in her custody and but admits that she left him in the custody and care of her parents.

13) From the admitted facts, it would be seen that the respondent being in Government service, as an incidence of service, she was transferred to various places. At that time, she had left the minor son in the custody with her parents who were residing at Puducherry. She being Government



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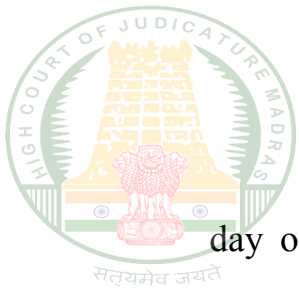
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Doctor, it would not be possible for her to take care of the minor son who is in her custody and utmost she would only be visiting her minor child in the given circumstances of the case. The petitioner provided various evidences in the upkeep of the minor child in his custody, which is not discredited by the respondent. The petitioner specifically undertaken to extend the facilities also for his younger son as same as his elder son. It is also admitted by the respondent that the younger son misses the warmth of his brother who is the custody of the petitioner. In such circumstances, this Court is of the view that the minor son who is in the custody of the respondent would be better placed if his custody given to the petitioner. The petitioner being the biological father and natural guardian can also be appointed as guardian.

14) In fine, the OP stand allowed on the following terms,

a) The petitioner is appointed as legal guardian for minor child Master.Sachin and he is entitled to the custody of the minor child.

b) The respondent shall have the custody of the minor child during the summer vacation, extended holidays and pooja holidays. Further, during the festivals, the respondent shall have the custody of the minor child for half a



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day of the festivals. She would also have custody of the minor child on

Sundays from 9 A.M. Till 4 P.M.

c) The petitioner/ father shall also provide for the video conferencing platform for the respondent to interact with minor child.

d) The petitioner shall also include the respondent in the academics and co-curricular activities of the minor and keep her updated at all times.

There shall be no order as to costs.

30.04.2025

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Index :Yes/No

Speaking order: Yes/ No

Neutral Citations: Yes/ No



Petitioner's witness:

WEB COPY P.W.1 - Dr.Babu

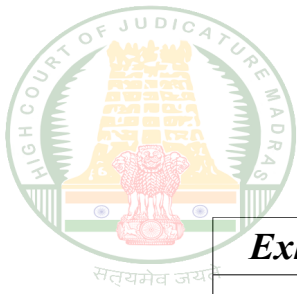
Documents exhibited by the petitioners:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Photocopy of PW-1's Aadhar Card (Compared with the original)
Ex.P2	Photocopy of PW-1's marriage certificate with the respondent held on 11.10.2011 (Compared with the original)
Ex.P3	Photocopy of the birth certificate of PW-1's elder minor son Kishore (Compared with the original)
Ex.P4	Photocopy of PW-1's police complaint dated 22.06.2012 lodged by PW-1 against the relatives of the respondent before Mudaliarpur Police Station, Puducherry (Compared with the original)
Ex.P5	Photocopy of the charge sheet bearing No.49/2014 filed in FIR No.37 of 2014 for the complaint given by PW-1 on 04.06.2014 issued by District Court, Puducherry on 26.08.2019 (Compared with the original)
Ex.P6	Photocopy of the FIR No.23/2012 for the complaint filed by the respondent dated 17.10.2012 issued by District court, Puducherry on 23.11.2012 (Compared with the original)
Ex.P7	Photocopy of the judgment in CC.No.60/2013, dated 17.12.2015 passed by Chief Judicial Magistrate, Puducherry (Compared with the original)
Ex.P8	Photocopy of the joint compromise memo filed by PW-1 and the respondent on 03.02.2016 before the Family Court,



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<i>Exhibits</i>	<i>Documents</i>
	Pondicherry in MOP No.354 of 2012 (Compared with the original)
Ex.P9	Photocopy of the judgment and decree dated 03.02.2016 passed by family court, Puducherry in MOP No.354 of 2012 (Compared with the original)
Ex.P10	Computer generated birth certificate of PW-1's another minor son Sachin
Ex.P11	Photocopy of the CSR No.1006 of 2018 for the police complaint filed by PW-1 on 05.11.2018 before SRMC Police Station (Compared with the original)
Ex.P12	Photocopy of the FIR No.2 of 2019 for the Police complaint filed by the respondent on 16.07.2019 before All Women Police Station, Pondicherry (Compared with the original)
Ex.P13	Photocopy of the order dated 22.08.2019 in CrI.O.P.No.22430 of 2019 and CrI.M.P.No.11670 of 2019, passed by this Court (Compared with the original)
Ex.P14	Photocopy of the order dated 07.10.2022 in D.V.C.No.100/2020 passed by Judicial Magistrate, Puducherry (Compared with the original)
Ex.P15	Photocopy of the judgment and decree dated 02.03.2023 in HMOP.No.227 of 221 passed by Subordinate Judge, Poonamallee (Compared with the original)
Ex.P16	Photocopy of the order dated 17.03.2023 passed by this Court in CrI.O.P.No.22430 of 2019 and CrI.M.P.No.11670 of 2019 (Compared with the original)
Ex.P17	(Series 3 Nos) are the computer generated LIC Policies and



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<i>Exhibits</i>	<i>Documents</i>
	Health Insurance Policies standing in the name of minor Kishore and Sachin
Ex.P18	(Series 3 Nos) are the Photocopies of School marksheet of elder son B.Kishore issued by Chennai Public School, Thirumazhisai.
Ex.P19	(Series 20 Nos) are the photocopies of extra-curricular activities certificates of elder son Kishore.

Respondent's witness:

R.W.1 - Dr.Seethalakshmy

Documents exhibited by the Respondent:

<i>Exhibits</i>	<i>Documents</i>
Ex.R1	Photocopy of RW-1's Identity Card (Compared with the original)

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K.KUMARESH BABU,J.

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Pre-Delivery Order in

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