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O.P.No.282 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 28.04.2025	PRONOUNCED ON 30.04.2025
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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

O.P.No.282 of 2023

Zainullabuddin ... Petitioner
Vs.

Nishath Firdouse ... Respondent

PRAYER: Original Petition filed under Section 3, 10 & 25 of the Guardians and Wards Act, 1890 read with Order XXI Rules 2, 3 & 11 of the Madras High Court Original Side Rules praying for the following relief:-

i) grant permanent custody of the person of the minor children Mohammed Umar and Mohammed Zakariaya born on 12.09.2018, now aged 4 years to the petitioner herein;

ii) and pass any other order

For Petitioners : Ms.Poongkhulali. B

For Respondent : Mr.S.Mohan Raj



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ORDER

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This petition is presented by the father of Minor Twins Mohammed Umar and Mohammed Zakaria to grant permanent custody of the minor in his favour.

2) It is the case of the petitioner that he and the respondent were married on 30.12.2016 at Chennai, both being employed at the time. After marriage, they began their marital life at the petitioner's residence in Kasturi Estate. The respondent gave birth to twin boys on 12.09.2018 at Kauvery Hospitals, Chennai. Subsequently, differences arose between them, and in December 2020, the petitioner moved into the respondent's parents' residence to support his wife and children. However, on 24.03.2023, he was forced to leave the respondent's parents' home. Following this, the respondent denied him access to the minor children. The petitioner issued a legal notice dated 16.05.2023 seeking access but received no positive response. Therefore, he has filed the present petition seeking appropriate reliefs.

3) It is the case of the respondent that, as the mother and primary caregiver, she is the natural guardian of the minor children. She asserts that



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the petitioner has consistently made false accusations against her and her parents since the beginning of their marriage. During her pregnancy, she was subjected to harassment and was forced to surrender her salary to the petitioner. The respondent has solely borne the financial responsibilities for the minor children, including their academic expenses, without any contribution from the petitioner. She has initiated divorce proceedings by filing O.S.No.168 of 2023 before the Additional Family Court, Chennai. The respondent claims that the petitioner never showed genuine love or concern for the children and often threatened to take them away. She contends that the present petition has been filed only to harass and coerce her into agreeing to his demands. Therefore, the respondent prays for dismissal of the petition.

4) Heard Ms.Poongkhulali.B, learned counsel for the petitioner and Mr.S.Mohan Raj, learned counsel for the respondent.

5) Ms.Poongkhulali.B, learned counsel for the petitioner contended that the petitioner seeks permanent custody of his twin minor sons, Mohammed Umar and Mohammed Zakariya, born on 12.09.2018, who have allegedly been forcefully retained by the respondent. It is submitted that the petitioner is the biological father and natural guardian of the said minor



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children. The children, currently aged six years, are studying in Grade I at Chettinad Vidhyashram, Chennai, and are residing at Mandavelipakkam, which falls within the territorial jurisdiction of this Hon'ble Court. She submits that the initial years of marriage were harmonious, and the couple even travelled to several destinations, including Thailand. Following the birth of the twins, the petitioner and his family provided the respondent and the children with adequate care, comfort, and a nurturing environment. The petitioner is said to have actively participated in the upbringing of the children and organised both pre-natal and post-natal ceremonies for the respondent.

6) It is further submitted that the respondent, upon resuming employment post-delivery, relocated with the children to her parental home and insisted that the petitioner join them there, causing him emotional distress as he had to leave his aged parents who depend on him. The respondent is alleged to have gradually restricted the children's involvement in the petitioner's family functions, including preventing their attendance at the funeral of the petitioner's father. Despite these setbacks and the emotional distance created, the petitioner continued to reside at the respondent's parental home in an attempt to ensure the well-being of the



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children and to salvage the marital relationship. However, on 17.03.2023, the respondent is said to have clearly expressed her unwillingness to continue as the petitioner's spouse, and from 24.03.2023 onward, the petitioner's access to and interaction with the minor children was significantly curtailed. Since 23.04.2023, the petitioner has not been permitted to meet the children. Subsequently, a legal notice was issued by the petitioner on 16.05.2023, which was not effectively responded to by the respondent. It is submitted that, based on the Counsellor's report in an application filed by the petitioner in this original petition, this Hon'ble Court granted visitation rights to the petitioner. The respondent, however, challenged the said order, and the matter is currently pending before the Hon'ble Division Bench.

7) She further submits that the children are suffering due to parental alienation, a practice that has been consistently deprecated in judicial precedents. The petitioner, being the natural guardian, is deeply concerned about the emotional and psychological welfare of the children and earnestly seeks the permanent custody of the minor children to ensure their overall development and well-being. Hence, she prays to grant permanent custody of the minor children, Mohammed Umar and Mohammed Zakariya, to the



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petitioner, in the interest of justice and the welfare of the children.

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8) Mr. S. Mohan Raj, learned counsel for the respondent, submits that the minor children, Mohammed Umar and Mohammed Zakariya, attained the age of five years on 12.09.2023. As per well-settled principles of law, particularly in respect of children of tender age, the mother—being the primary caregiver—is considered the natural guardian, and not the father, as wrongly claimed by the petitioner. He contends that the petitioner, with malafide intent, cohabited with the respondent solely to take advantage of the salary earned by the respondent and with an ulterior motive to eventually claim rights over the property belonging to the respondent's parents. He further submits that the petitioner engaged in manipulative conduct, subjecting the respondent to continuous harassment through subtle but persistent acts, all aimed at achieving his personal gains.

9) It is further submitted that the petitioner's claim regarding bearing the educational expenses of the children is exaggerated and misleading. In reality, the petitioner contributed only a nominal portion of the expenses, while the respondent has shouldered the major responsibility of their upbringing and education. He further asserts that the petitioner has been an



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absentee father, displaying negligible involvement in the lives of the children, and was an abusive spouse, focusing solely on his personal interests. In March 2023, the petitioner allegedly left the matrimonial home of his own accord, stating that he intended to live with another woman, and not due to any of the reasons now put forth by him.

10) It is also submitted that the respondent has already instituted O.S. No.168 of 2023 before the competent court, seeking dissolution of marriage with the petitioner. The current petition for permanent custody, according to him, is a mere eyewash, lacking genuine concern for the welfare of the children. The petitioner, having never participated meaningfully in their upbringing, now seeks custody with a vindictive motive, aiming to coerce the respondent into succumbing to his unreasonable demands. The learned counsel submits that the children have been under the exclusive care and custody of the respondent since birth, and their well-being has been solely ensured by the respondent, without any support or affection from the petitioner. In view of the above, he prays to dismiss the Original Petition filed by the petitioner, in the interest of justice.

11) I have considered the submissions made by the respective



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counsels and perused the materials placed on record.

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12) The Children are admittedly in the custody of the respondent and are currently aged 6 years. A bare perusal of deposition of both the parties would indicate that had only spoken about the differences between themselves and the manner in which they got separated from which on the petitioner was not permitted to visit the child, till the interim orders in this instant Original Petition.

13) Neither of the parties has cared to claim in what manner one will be suitable over the other. Nor they have deposed about the manner in which the children would be brought up neither the plans to the upbringing of the children have been made. The petitioner in his proof has claimed financial stability and has stressed the need for co-parenting ,but has not placed on record any statements to substantiate his financial capability. The plea of the parties to jointly take care of the children cannot be gone into in the Original Petition, as the respondent has admittedly filed a suit for dissolution of the marriage. Currently the respondent/mother is in custody of the minor children and there is no complaint from the petitioner, she is incapable in manner from taking care of the children.



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14) In view of the aforesaid findings and reasonings, this Court does not find any merit in the Original Petition. However, the petitioner being the biological father is entitled for visitation rights of the minor children.

15) In fine, the claim in the OP is rejected on the following terms:-

a) The respondent is appointed as legal guardian of the minor children and shall also entitle to hold the minor children.

b) However, the petitioner/father is entitled for visitation of the minor children for 50 percent of the summer vacation and the extended holidays during Pooja and Christmas holidays.

c) The petitioner/father is also entitled to have custody of the minor children during festivals from 2.00 pm to 8.00 pm.

d) The respondent/mother shall provide a platform for video conferencing enabling the father to have video conferencing with the minor children on alternate days. The petitioner/father shall also have the custody



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of the children on all Sundays from 10.00 am to 4.00 pm.

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12) Consequently, connected Applications are closed.

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Index :Yes/No

Speaking order: Yes/ No

Neutral Citations: Yes/ No

Petitioner's witness:

P.W.1 - Mr.Zainullabuddin

Documents exhibited by the petitioners:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	(Series 2 Nos) are the computer generated birth certificates of PW-1's minor sons Mohammed Umar and Mohammed Zakariya
Ex.P2	Computer generated PW-1's account statement issued by HDFC Bank for the proof of payment of school fee for PW-1's minor children
Ex.P3	Whatsapp communication between PW-1 and the respondent
Ex.P4	(Series 3 Nos) are the photographs of the minor children with PW-1.
Ex.P5	(Series 9 Nos) are the photographs of the minor children along with PW-1, the respondent and PW-1 family members.
Ex.P6	Copy of the legal notice dated 16.05.2023 sent by PW-1 to the respondent along with the acknowledgment card.



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<i>Exhibits</i>	<i>Documents</i>
Ex.P7	Photocopy of PW-1's Aadhaar Card (Compared with the original)
Ex.P8	E-mail dated 08.04.2024 send by PW-1 to the respondent regarding payment of school fee for term I, 2024.
Ex.P9	(Series 2 Nos) are the E-mails dated 13.10.2023 and 27.10.2023 received by PW-1's counsel from the respondent's counsel regarding cancellation of visitation.
Ex.P10	Affidavit under Section 63 of BSA
Ex.P11	Pendrive for Exs.P6 and P7.
Ex.P12	PW-1 declaration of willingness to act as guardian

Respondent's witness:

R.W.1 – Ms.Nishath Firdouse

Documents exhibited by the Respondent: NIL

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K.KUMARESH BABU,J.

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Pre-Delivery Order in

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