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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-01-2025

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THE HONOURABLE DR JUSTICE G. JAYACHANDRAN

A NO. 805 of 2022

AND

OP NO. 495 OF 2017, OP NO. 556 OF 2019

Mrs.Sowjath Begam
W/o.S.M.Jainudeen No.36, Thakkar Street, First
Floor, Purasaiwakkam, Chennai-600084.

Applicant(s)

Vs

S.M.Jainudeen
S/o.Late Syed Ali Rowther, No.40, Labbai Street,
Pudupet, Chennai 600 002.

Respondent(s)

For Applicant(s):

M/s.G.Rm.Palaniappan
V.C.Janardhanan-ms/513/2001
R.Krishna

For Respondent(s):

M/s.G.Ilangovan (867/88)
S.Renuka-ms/2392/2010
Raja Loganathan-ms/108/2017
Change Of Vakalat
For Rest.(1) - D.No.10918/2022
[344, O.N.162, 1st Floor, Thambu Chetty St, Ch-1
(9840034171)].

ORDER

The application has been filed to remove the guardianship of the
respondent father in respect of minor child, Halima Meharaj, by setting aside



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the order of this Court dated 03.01.2018, passed in O.P.No.495 of 2017, which appointed the respondent, father of the minor child, as the legal guardian. The applicant, mother of the minor child, has sought to be appointed as the legal guardian of the minor child.

2. The short fact involved in this matter is that the parties, who are followers of Islamic faith, married and later separated. During their marriage, a child named Halima Meharaj was born and properties were purchased in her name. After dissolution of the marriage, O.P.No.556 of 2019 was filed by the father, who is the respondent herein, seeking appointment as the guardian to sell the property held in the name of the minor for the purpose of reinvesting in another property.

3. This Court has permitted the respondent to act as the legal guardian by allowing the O.P.No.495 of 2017. Later, the respondent contracted a third marriage and is alleged to have neglected the minor child and the income derived from the minor child's share. Hence, the present application is filed by the mother to remove respondent's guardianship and appoint her as the legal guardian.



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4. In the counter filed by the respondent it is narrated that how he had invested the sale proceeds of the minor's property, which was situated in the Secretariat Colony, Kilpauk. However, there is no evidence to show that the income derived from the minor's property was transferred to the minor child or utilize for the welfare of the minor. Hence, on 02.07.2024, this Court directed the respondent to furnish a statement of accounts and deposit the rental income received from the month of July into the minor's account and report the same to this Court.

5. Instead of complying the said order, the respondent filed an affidavit justifying his failure to share the rental income to the minor daughter. Subsequently, on 15.07.2024, this Court again directed the respondent to file statement of accounts and reiterated its order once again on 24.07.2024. In spite of several adjournments, the statement of accounts was not filed and the information disclosed by the respondent was neither complete nor accurate regarding the income and expenditure derived from the minor's property.

6. Therefore, on 03.01.2025, this Court recorded the respondent's failure to provide a proper account and to deposit the rental income into the minor's account. The matter was adjourned, granting three weeks' time for the compliance.



7. Today, when the matter was taken up for consideration, the learned counsel appearing for the respondent sought time to file his counter and a proper statement of accounts.

8. This Court, taking note of the fact that after obtaining permission from the Court to convert the asset of the minor child, the income derived from the minor's property has admittedly not been transferred to the minor child. This Court finds that the applicant, who is the mother of the minor child, has been burdened with maintaining the child despite the fact that the minor has income generating property. Therefore, it is evident that the respondent has failed to discharge his duty as a guardian, as recognized by the Court order passed in O.P.No.495 of 2017, dated 27.08.2019, 03.01.2018 and the subsequent order permitting him to sell the property of the minor vide order dated 27.08.2019.

9. Hence, the application for removal of guardianship is allowed. The order passed by this Court in O.P.No.495 of 2017 dated 03.01.2018 is hereby set aside. The applicant, being the mother and natural guardian, is appointed as the legal guardian of the minor child. Henceforth, the property of the minor shall be administered by the applicant herein.



10. The tenants occupying the minor's property are directed to recognize the applicant as the Court appointed guardian. The respondent is directed to hand over the original title deed of the minor's property to the applicant within a period of 30 days from today.

24.01.2025

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