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O.S.A.No.324 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2025

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

AND

THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

O.S.A.No.324 of 2025

AND

C.M.P.No.24062 of 2025

Dr.Seethalakshmy

.. Appellant

Vs.

Dr.Babu

.. Respondent

Original Side Appeal filed under Order XXXVI Rule 2 of Original Side Rules read with Clause 15 of Letters Patent Act, against the order dated 30.04.2025 passed in O.P.No.396 of 2023.

For Appellant : Mr.A.V.Arun

For Respondent : Mr.R.Sathish Kumar

J U D G M E N T

(Delivered by S.M.SUBRAMANIAM, J.)

The present original side appeal has been instituted to assail the judgment and decree dated 30.04.2025 passed in O.P.No.396 of 2023.

2. The respondent in O.P.No.396 of 2023 is the appellant before this Court. The respondent herein filed O.P. under the Guardian and Wards Act, 1890, seeking custody of his minor son Sachin born on 02.02.2017.



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3. The facts not contested between the parties are that marriage between appellant and respondent was solemnized on 06.10.2011 at Vel Sokkanathan Thirumana Nilayam at Puducherry, as per Hindu rites and customs; two male children were born and the elder son is Master Kishore and the younger son is Master Sachin; on account of misunderstanding, the marriage between the appellant and the respondent came to be dissolved through the court of law.

4. It is not in dispute that the elder son Master Kishore is with the custody of the respondent/father. The custody of younger son Master Sachin is with the appellant/mother right from his birth. The respondent/father filed O.P. seeking custody of Master Sachin.

5. The learned Single Judge considered the issues and allowed the O.P. mainly on the ground that both father and mother are doctors and particularly, the mother is in Government service. Therefore, she has to face frequent administrative transfers and may not be in a position to take care of minor boy Sachin. It is mainly considered that the appellant/mother is working as a doctor in a transferable post and therefore, the custody is to be handed over to the respondent/father.



6. The learned counsel for the appellant would mainly contend that Master Sachin is with the custody of the appellant/mother right from his birth and therefore, transferring the custody at the age of 8½ years would affect his mental health. That apart, the respondent/father is also a practising doctor and a Cardiologist and the elder son Master Kishore is being taken care of by his paternal grandparents. That being so, the very contention of the respondent that the appellant/mother cannot take care of the younger son is baseless.

7. At present, the appellant/mother is holding the post of Assistant Professor at Government Medical College and Hospital, Mundiampakkam, Villupuram District. Therefore, she is taking care of younger boy Master Sachin with the assistance of her parents and he is now studying in 4th standard.

8. The learned counsel for the respondent would oppose by stating that the elder son Master Kishore is with the custody of the respondent/father, who is practising at Chennai. Therefore, he will be in a better position to take care of both the minor children. The learned single Judge considered the fact that the appellant/mother is in Government service and she may be transferred frequently to various places and may not be in a position to provide adequate care and protection to the younger minor son Sachin. Therefore, the present



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appeal is liable to be rejected.

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9. We have considered the rival submissions made between the parties to the *lis*.

10. Best interest of the child is of paramount importance. Right of a child to have a choice is to be given due weightage by the Courts. Choice and wishes of a child can be ascertained either by examining the child, if the child is capable of understanding the circumstances, including likes and dislikes. Any forcible custody by the Courts would infringe the right of a child, which is unacceptable. Child rights are globally recognised. Therefore, the best interest clearly is to be adopted by ascertaining the wishes, choice and interest of a child. Materialistic life style or financial soundness alone cannot be considered as a criteria. Beyond luxurious life, children want love and affection. Therefore, the best person to take care of a child is to be considered, taking into consideration multiple facts and the interest of the child. Children are nation builders, and moulding their character and providing better education are vital factors to be concentrated by the Courts, while taking decisions in the matter of custody.

11. To ascertain the interests, wishes and choice of minor boy Sachin,



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this Court examined him. Master Sachin is not only courageous but also capable of understanding Court proceedings and answered all the questions unhesitatingly and in a clear manner. Master Sachin reiterated before this Court that appellant/mother is taking care of him for long years and showing him love and affection. He expressed his willingness to live with his mother. He is a badminton player in school and scores high marks. His mother used to teach him with love and affection. Therefore, he says that he is willing to stay with his mother. He was not taken care of by his father/respondent for long years. Recently, his father is taking care of him, but Master Sachin is unhappy with his father and unwilling to live with him.

12. This Court examined the elder son, Master Kishore. He admitted that his younger brother Sachin was living with their mother for long years, right from his birth. However, Master Kishore has chosen to live with his father/respondent. He is being taken care of by his paternal grandparents. Thus, it is made clear before this Court that the elder son, Master Kishore, prefers to live with his father/respondent, and the younger son, Master Sachin, is willing to live with his mother/appellant.

13. Forcible transfer of custody would affect the mental health of a child. Children cannot be treated as commodities. They do have rights, which are recognised across the world and in particularly in India. Better future of the



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children is of paramount importance for nation-building. Thus, mental health, a good living atmosphere and choice of studies all need to be taken into consideration while deciding the custody matters. In the present case, minor Sachin is studying in a school at Puducherry and living with his mother and maternal grand parents. Therefore, transfer of custody from appellant to respondent would affect the choice and mental health of minor Sachin. That apart, the contention of the respondent that appellant is not taking care of minor Sachin is incorrect.

14. Both the appellant and respondent are doctors and are getting assistance from their respective parents to bring up their children. Since minor Sachin has expressed his willingness to live with his mother/appellant, this Court has no option but to protect his choice, future interest and mental health. However, the appellant/mother shall permit the respondent/father to visit Master Sachin, and the respondent/father shall permit the appellant/mother to visit their elder son Mastor Kishore whenever such a request is made, and any such meeting may be arranged at a place and time mutually decided between the parties.

15. Accordingly, the order impugned dated 30.04.2025 in O.P.No.396 of



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2023 is set aside, and the appeal stands allowed. No costs. Connected

C.M.P. is closed.

(S.M.S,J.) (M.S.Q, J.)
23.10.2025

Index : Yes/No
Neutral Citation : Yes/No
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