



O.P.No.727 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

RESERVED ON 25.02.2025	PRONOUNCED ON 23.06.2025
---	---

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU
O.P.No.727 of 2022

Sundarraaj

... Petitioner

Vs

Santhosh Premkumar

... Respondent

PRAYER: Original Petition filed under Sections 3, 7, 10, 17, 19 & 25 of the Guardians and Wards Act, 1890 read with Order XXI Rule 2, 3 and 11 of the Madras High Court Original Side Rules praying for the following reliefs:-

- Appointing the petitioner as a fit and proper person to be a guardian of the person on the minor children S.Sasha and S.Merwin;
- Provide the petitioner with exclusive custody of the minor children S.Sasha and S.Merwin;
- Permit the petitioner to do and carry all necessary activities for the welfare of the minor children S.Sasha and S.Merwin
- pass such other further order.

For Petitioner : Mr.G.R.Hari

For Respondent : Mr.S.Conscious Ilango



O.P.No.727 of 2022

ORDER

WEB COPY This petition is presented by the maternal grandfather of minor children S.Merwin and S.Sasha, to appoint him as legal guardian and to grant permanent custody of the minor children in his favour.

2) The petitioner is the maternal grandfather, and the respondent is the biological father of the minor children. The petitioner's elder daughter was married to the respondent, and from the said wedlock, two minor children were born, namely S. Merwin on 18.11.2009 and S. Sasha on 26.11.2013. The respondent subjected the petitioner's daughter to both physical and verbal abuse, resulting in a discordant marital life. The petitioner's daughter, who was also the mother of the minor children, passed away on 05.03.2020. Following her demise, the respondent's behavior showed no remorse, indicating an indifferent attitude towards his wife's death. Furthermore, the respondent was convicted of sexually abusing his own daughter, demonstrating his incapacity and unfitness to be the natural guardian of the minor children. Therefore, the petitioner prays for the appointment of himself as the legal guardian and for the grant of permanent custody of the children, considering their best interest and welfare.



O.P.No.727 of 2022

3) The case of the respondent is that the petition is not maintainable

against the natural guardian and was filed with an oblique motive, warranting dismissal. There was no marital discord, as the respondent and his wife lived happily, and the respondent denied allegations of dowry harassment or abuse. Further the death of the respondent's wife resulted from abortion complications, not foul play. The petitioner's complaints were an afterthought, as the respondent stayed at the petitioner's house after his wife's death to perform rituals. The petitioner falsely implicated the respondent in a POCSO case, motivated by financial gain, and failed to protect the minor girl's identity. The respondent's POCSO conviction challenge does not render him unfit as a guardian and that the petition was filed with mala fide intent to separate the children from the respondent. Hence, the respondent prays for dismissal.

4) On the side of the petitioner, the petitioner has examined himself as PW1 and marked Ex.P1 to Ex.P7. The respondent has not examined himself.

5) Heard Mr.G.R.Hari, learned Counsel appearing for the petitioner and Mr.S.Conscious Ilango, learned Counsel appearing on behalf of the



O.P.No.727 of 2022

respondent.

WEB COPY

6) Mr.G.R.Hari, Learned counsel appearing for the petitioner submits that the petitioner's elder daughter, late Sharmila, was married to the respondent and gave birth to two minor children, who are the wards herein. He further submits that the marital life of the respondent and the petitioner's daughter was not harmonious, as the respondent used to abuse her for dowry. He also submits that the respondent neglected to take care of the petitioner's daughter during and after both of her gestation periods. He contends that under such circumstances, the petitioner's daughter died on 05.03.2020 at Hyderabad Hospital due to septicemic shock, under suspicious circumstances. Subsequently, the petitioner filed a police complaint at Hyderabad, where she died, on 19.05.2020, and at Chennai on 27.05.2020, against the respondent, alleging suspicious death. He further submits that the petitioner filed a writ petition concerning the suspicious death of his daughter, wherein this Hon'ble Court ordered the exhumation of the body. Thereafter, on 01.10.2020, the Kilpauk Medical College (KMC) opined that the deceased appeared to have died from the effects of septicemic shock due to incomplete abortion.



WEB COPY

7) He further submits that the respondent neither fulfilled his duties as a husband nor took care of the minor children as a father. He also submits that when the petitioner and his wife took the minor granddaughter to a doctor for consultation regarding her discomfort on 04.06.2020, they were shocked when the doctor informed them that the minor girl had been sexually assaulted by the respondent, who is her biological father. Following the doctor's advice, the petitioner's wife lodged a complaint with the DCP, Thousand Lights Wing, under the POCSO Act, for sexually assaulting a minor girl, resulting in the registration of FIR No.6 of 2020. He further submits that the victim girl's statement, recorded on 16.06.2020, revealed that the respondent had pinched her in the private area where she urinates when she was just six years old. In Special Sessions Case No.23 of 2021, the respondent was convicted for the POCSO offence, and the judgment was marked as Ex.P7.

8) He further submits that the respondent lacks the capacity to care for his minor children, as he has not contributed financially towards their necessities. Moreover, he has been convicted of sexually assaulting his own daughter, who is one of the wards. The petitioner, being a retired Bank Manager, possesses substantial resources to support the children's education



O.P.No.727 of 2022

WEB COPY

and other needs and is eager to fulfill his late daughter's wishes to provide a better life for the children. The petitioner, as the maternal grandfather, earnestly wishes to take responsibility for the minor children. Additionally, the maternal uncle of the minor children has filed an affidavit expressing his willingness to relocate the children to New Zealand, where he is employed, and take care of them, along with his parents. The said affidavit was marked as Ex.P6. However, the respondent has prevented the minor children from joining their maternal uncle. Therefore, the petitioner humbly prays before this Hon'ble Court to appoint him as the legal guardian and grant him permanent custody in the best interest and welfare of the minor children.

9) Mr. S. Conscious Elango, learned counsel for the respondent, submits that this petition is not maintainable either in law or in fact against the natural guardian of the minor children. He contends that the petition has been filed with an oblique motive and deserves to be dismissed in limine. He further submits that there was no dispute between the respondent and his wife, and on the contrary, they lived happily. He denies the allegation that the respondent demanded dowry, asserting that the respondent's father was financially well-off due to his successful business, and, in fact, the respondent and his parents extended financial support to the petitioner



O.P.No.727 of 2022

WEB.COM

during times of need. He also submits that the respondent never abused his wife, emphasizing that she never lodged any complaint against him during her lifetime. He further submits that the respondent's wife died due to complications arising from an abortion, and this fact was well known to the petitioner and his wife. He denies the allegation that the respondent killed his wife by continuously torturing and intoxicating her with a dangerous substance.

10) He further submits that the petitioner's complaints were made as an afterthought since the respondent stayed at the petitioner's house for 11 days after his wife's death to perform rituals before returning to his mother's house at Anna Nagar. He argues that only after a lapse of two and a half months from his wife's demise did the petitioner start filing false cases one after the other against the respondent. He also contends that, despite having custody of the minor girl, the petitioner falsely implicated the respondent in a mischievous case, even at the cost of tarnishing the reputation of the respondent's daughter. He further submits that the petitioner failed to protect the minor girl's identity during the proceedings, which was later rectified by the respondent through a necessary application.



O.P.No.727 of 2022

WEB.COM

11) The learned counsel further contends that the petitioner and his wife, being in constant financial need, have lodged false cases with an ulterior motive to grab the respondent's property. He submits that the petitioner has suppressed the fact that the maternal uncle of the minor children is married and settled in New Zealand with his own family. He also contends that the petitioner does not have sufficient means to care for the minor children and has not submitted any proof of his financial capacity before the Court. He further argues that although the respondent is contesting the conviction order in the POCSO case, it does not render him incapable or unfit to be the natural guardian. He submits that the petition has been filed with a mala fide intention to keep the children away from the respondent and to propagate a fabricated story. He contends that the petitioner has no genuine concern for the welfare of the respondent's children and argues that granting custody to the petitioner would seriously compromise the interest and welfare of the minor children. Hence, he prays for the dismissal of the petition.

12) I have considered the submission of the learned counsel for the plaintiff and perused the materials available on record.



WEB.COM

13) There is no dispute as regards to the parties of their relationship with the minor children. The reason for the death of the mother of the minor child also need not be ventured upon. Under Ex.P7, the respondent herein had been convicted of an offence committed under the POCSO Act against his minor daughter. The criminal Court by a detailed order, upon the facts placed before it had convicted him for such offence.

14) It is the case of the respondent that he had filed an Appeal against the present order and has been enlarged on bail. As claimed that allegations made against him for committing the offence under POCSO are false, he had also attempted to cross-examine PW1 in that regard. It is to be seen that a competent criminal Court had convicted and sentenced the respondent for the offence which he had committed against his own minor child. Unless or until the respondent gets an honourable acquittal in the appeal, the respondent cannot be said to have not committed the offence. Even a benefit of doubt would not wipe away the allegations made against the respondent. This conduct of the respondent for which he had been convicted, itself render him incapacitated to for the custody of the minor children. Further, even though the petitioner had not filed any documents to substantiate his financial capacity, it could be seen that during the cross-examination, to a suggestion put by the learned counsel for the



O.P.No.727 of 2022

respondent, he had indicated that he is a retired bank employee receiving pension. That apart he had also indicated that his son who is in New Zealand would also support not only the petitioner and his wife but also the minor children.

15) This Court is also not inclined to grant any interim custody or visitation rights to the respondent at present considering the sentence and conviction imposed on him under Ex.P7.

16) In view of the same, I do not find any impediment in granting custody of the minor children to the petitioner and as a sequence he is also appointed as legal guardian of the person of the minor children. At this instance, the Original Petition stands allowed at on the following terms:-

i)The petitioner is appointed as the guardian of the person of the minor children S.Merwin aged about 16 years and S.Sasha aged about 12 years,

ii)The petitioner would be entitled to have the permanent custody of the minor children,

iii)The respondent would not have a right of visitation nor interim custody of the minor children in the view of conviction in POCSO case.

There shall be no order as to costs.



O.P.No.727 of 2022

WEB COPY

Gba

.06.2025

Index :Yes/No

Speaking order: Yes/ No

Neutral Citations: Yes/ No

List of witnesses examined on the side of the petitioner:

PW1- Mr.Sundarraaj

List of documents marked on the side of the petitioner:

Exp1	The computer generated birth certificate of the Minor boy S.Merwin Premkumar	
Exp2	The computer generated birth certificate of the Minor girl S.Sasha Premkumar	
Exp3	The certified copy of the final report in Crime No.6 of 2020 of All Women Police Station, Puliyanthope, Chennai-12 obtained from City Civil Court, Chennai.	
Exp4	The Computer generated death certificate of my elder daughter Ms.Sharmila Santosh	
Exp5	The photocopy of PW1 Aadhaar Card (Compared with the original)	
Exp6	The affidavit of PW1	02.10.2023
Exp7	The certified copy of the Judgment in Special Sessions Case No.23/2021 passed by Session Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai	03.10.2023

List of witnesses examined on the side of the Respondent:

11/13



O.P.No.727 of 2022

NIL

List of documents marked on the side of the Respondent:

NIL

Gba

23.06.2025



WEB COPY



O.P.No.727 of 2022

K.KUMARESH BABU,J.

gba

O.P.No.727 of 2022

23.06.2025