

OSA.No.244 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 10.07.2025

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N. SENTHILKUMAR**

O.S.A.No.244 of 2023

M.Vijayakumar

.... Appellant

VS

1.S.Mani
2.Premavathi
3.M.Saravanan
4.S.Sakthi Priyadarshini

.. Respondents

Prayer : APPEAL filed under Order XXXVI Rule 1 of the Original Side Rules, 1994 and Clause 15 of the Letters Patent of 1865 against the order dated 28.08.2023 passed in O.P.No.31 of 2022 on the file of this Court.

For Appellant : Ms.Gopika Nambiar

For Respondents : Mr.R.Vinayagamoorthy



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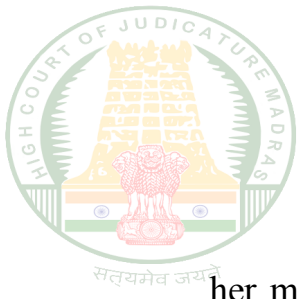
J U D G M E N T

(Judgment of the Court was delivered by Dr.ANITA SUMANTH.,J)

The present Original Side Appeal is filed challenging order dated 28.08.2023 disposing Original Petition No.31 of 2022 filed under the Guardian and Wards Act, 1890. The prayer in the Original Petition was for custody of minor V.Sai Varun (in short 'child') sought under Section 25 of the Act.

2. A.No.1730 of 2022 had been filed seeking interim custody of the child for a period of three weeks between 01.05.2022 to 22.05.2022, and that period has passed uneventfully. Thereafter, the learned single Judge has disposed the Original Petition by way of the present impugned order, wherein custody has been granted to the respondents, i.e., maternal grandfather/R1, maternal grandmother/R2, maternal uncle and his wife/R3 and R4.

3. The matter arises in this context. The appellant was married to one Mrs.Shanthi, daughter of R1 and R2 and sister of R3 on 30.06.2017. Sai Varun born to them on 15.03.2018. Mrs.Shanthi had been suffering with medical ailments, including cardiac issues, which came to the fore at the time of delivery of the child. Just prior to the delivery, she had gone to



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her maternal home to assist her aged parents, who were also unwell and hospitalised.

4. She delivered the child and returned to the matrimonial home though she continued to visit and stay in her maternal home intermittently to take care of her parents. Unfortunately, Mrs.Shanthi passed away on 29.10.2021 of a cardiac arrest. Sai Varun was just 3 years at that time. The child continued thereafter to be with the respondents and according to Ms.Gopika Nambiar, learned counsel who appears for the appellant, there had been resistance to the father having custody of the child paving the way for the Original Petition seeking custody under Section 25 of the Act.

5. The case of the appellant both before the learned single Judge as well as before us, was that not only was he being denied the custody, but that he was also being prevented from meeting the child. Being the biological father and since he genuinely cared for the child, he had made attempts on several occasions to create a bond with the child which did not fructify, on account of the non-cooperation and in fact, negative attitude of the respondents.

6. There is no dispute that the appellant is well placed in



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employment, earning a monthly salary of Rs.1,20,000/- as on date. His lifestyle is conducive to rearing a child comfortably and in a healthy environment. The mother of the appellant resides with him and his sister resides close to their house. As of now, the appellant has no plans to remarry.

7. Though there are some allegations in regard to the inadequate attention bestowed on the child by the respondents, such as unattended dental issues, that were raised before the learned single Judge, learned counsel for the appellant would not dwell on those issues before us.

8. The case of the respondents in the OP was that the child was very close to the maternal grandparents. He had the company of his cousin, born to R3 and R4, and they reside close-by. He is well taken care of by the respondents and doing well in school. He will be emotionally very disturbed if he is taken away from their care and handed over to the father, whom he hardly knows.

9. The respondents point out that the father is engaged in his career and hence, and naturally, the child would be left in the care of his elderly mother, who would not be in a position to take care of him by herself. It is



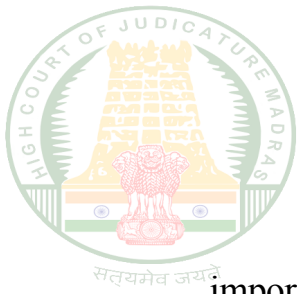
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thus possible that the child will be left in the care of a nanny or if the appellant were to remarry, be in the care of the step mother who may not care for him at all. The respondents had emphasised even earlier, and reiterate before us, that they have never denied visitation rights to the appellant and he is always at liberty to visit him.

10. Having regard to the submissions made, learned Judge had concluded that the respondents were better placed to have custody of the child. The only point that the learned Judge notes in favour of the appellant was that he was well placed in employment. On the other hand, what weighed in the respondents' favour was that the maternal grandfather was a retired Government servant, maternal grandmother, a school teacher, they are financially well-off, and Varun's cousin lives close by, and will provide him good company.

11. In all, the conclusion of the Court was that it would be a better arrangement if the Respondents were to have custody of the child with full visitation rights given to the father whenever he wishes to interact over telephone or virtually, or come in person once a month. The learned Judge accedes to the position that the role of the father in child rearing is



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important and that this must be accommodated in the life of the child.

However, having regard to the time at the disposal of the grandparents, the conclusion was that the respondents were better placed to attend to the needs of the child.

12. Learned counsel for the appellant has assailed the order on the ground that it does not align with the mandate of the Act. Our attention is drawn to section 6 of the Hindu Minority and Guardianship Act, 1956 and Section 24 of the Guardian and Wards Act, 1890 to bring home the point that legal custody of a child must be with the biological parents or one of them. It is only in circumstances where the biological parent is indisposed from rendering her or his duties as a parent, that an alternative must be found.

13. She would argue that there has been nothing noted as against the father and hence granting custody to the maternal grandparents and family, militates against the law. On facts, she states that there is no evidence on record to the effect that the maternal grandfather retired from a government job. She has placed reliance on the following decisions:

1.Vivek Kumar Chaturvedi and Another v. State of U.P. and others (2025 SCC OnLine SC 264)



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2.(Kode) *Atchayya v. Kosaraju Narahari* (1928 SCC OnLine Mad 346)

14. Mr.R.Vinayagamoorthy, learned counsel for the respondents would reiterate the submissions made before the learned single Judge, also emphasising that the father, in fact, does not have any interest in child rearing as he has only visited the child on one or two occasions, despite full visitation rights having been granted to him. His disinterest is thus palpable. The present petition has been filed by him merely on a whim and to claim custody as a matter of right and does not really come from the heart.

15. At the outset we record that the appellant has admitted that his visits to child have been sporadic, at best, and can be counted on the figures of one hand. However, he has maintained that that was on account of the non-cooperative and cold attitude of the respondents, who made him feel very unwelcome in their home. In the deposition of the appellant recorded on 19.09.2022, he states that his attempt to visit the child were resisted and he was being made to wait for 15 minutes every time, outside their house.



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16. We have tried to visualise the situation. Admittedly, Mrs. Shanthi had been suffering from cardiac issues even at the time of her marriage to the appellant. Whether that was revealed to the appellant prior to their marriage or not, is something only the parties will know. But both are equally assertive in regard to their respective stands, the appellant that he had not been so informed, and the respondents that he had been informed.

17. However, this point of dissension has not been pursued very seriously by either of the parties before us and we have gathered the degree of acrimony on this score from the narration in the impugned order. With the demise of Mrs. Shanthi, the issue lingered, only to cast a strain on the relationship between the appellant and his in-laws, the unfortunate casualty being the time lost between father and son.

18. Section 6 of the Hindu Minority and Guardianship Act, 1956 deals with '*Natural guardians of a Hindu minor*' and states that in the case of the person as well as property of a Hindu minor boy, excluding the undivided interest in the joint family property, where the child is over the age of 5, the father, and after him, the mother shall be the natural guardian.



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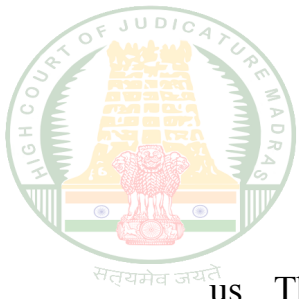
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Section 24 of the Act states that a guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education and such other matters as the law to which the ward is subject, requires.

19. A combined reading of the aforesaid would clarify the legal position that the natural guardian of a minor Hindu boy till the age of 5 shall be the mother and thereafter the father and after him, the mother. The law also requires that the parent who is charged with legal custody of the child must look to his support, health and education and all relevant matters. Hence, the legal entitlement to custody of the father can be disturbed only in the event he is not fit or lacks the capacity to attend to the support, health, education and other relevant matters concerning the minor's welfare.

20. In *Vivek Kumar Chaturvedi* (supra), the Supreme Court has reiterated the settled position that it is the welfare of the minor child which is of paramount consideration and, on the facts of that case, that it would be served by allowing him to continue with the father while the grandfather had been granted visitation rights.

21. The facts of the above case are very similar to the case before



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us. The Court records that the single Judge in that case had not spoken to the child to ascertain his sentiments towards him when he had been separated from the father in the year 2021, after living for 10 years with his parents till his mother died.

22. The Court says that the grand parents could not, at any rate, have a better claim than the father who is the natural guardian. They then go on to note the exceptions to the aforesaid Rule such as ill treatment of either mother or child or his inability financially or otherwise, including for medical reasons, to be unable to care for the child. The relevant portions of the judgment read as follows:

'.....

3.The learned Single Judge who disposed of the Writ Petition interacted with the child who submitted that he is comfortably residing and pursuing his education at his maternal grandfather's house. It was also noticed that the father had re-married. On the basis of the above findings, it was opined that the welfare of the minor child; which is of paramount consideration, would be served by letting him continue with his grandfather; while the father was granted visitation rights to meet the child regularly on the first day of every month at the venue fixed by the jurisdictional Station House Officer.

.....

10.We cannot but observe that the learned Single Judge has not endeavored to elicit the child's attitude



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towards his father. Admittedly, the child, after his birth, was with his parents for about 10 years till the death of his mother. He was separated from the father in 2021 and has been living with his grand- parents, who cannot have a better claim than the father, who is the natural guardian. There is no allegation of any matrimonial dispute when the mother of the child was alive nor a complaint of abuse perpetrated against the wife or son. The father, the natural guardian, we reiterate, is well employed and educated and there is nothing standing against his legal rights; as a natural guardian, and legitimate desire to have the custody of his child. We are of the opinion that the welfare of the child, in the facts and circumstances of this case, would be best served if custody is given to the father.

11.However, we cannot ignore the fact that the child did not have the company of the father for more than three years and the child is now with the grand-parents and his academic year is coming to an end; pursuing the 7th standard in a school near the residence of the grand-parents. In the above circumstances, to permit the child to complete the academic year, we direct the child to be retained in the custody of the grandfather till 30.04.2025. While the child is continuing in the custody of the grand-parents, we permit him to be taken by the father; the appellant-herein, on alternate weekends to reside in his paternal house. The child shall be taken on the evening of Friday or the morning of Saturday and returned on the evening of Sunday. This arrangement shall continue upto 30.04.2025 till the custody of the child is handed over to the father; on 01.05.2025 in the presence of the jurisdictional Station House Officer. The grand-parents shall also have visitation rights, post-handing over of custody and they shall be permitted to take the child to their residence on every weekend in which the second Saturday falls, starting from June, 2025; which arrangement shall continue for an year and then, as per the desire of the child. The Guardian O.P. filed before the jurisdictional Family Court shall stand



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closed.'

23. In *(Kode) Atchayya* (supra) also, a Division Bench of this Court after taking note of Section 24 of the Act refers to the judgment of the Privy Council in *Annie Besant v. G. Narayaniah* (AIR 1914 PC 41), reiterates the statutory duty cast upon a parent upon a guardian of ward to '*look to his support, health and education and such other matters as the law to which the ward is subject requires*'. This view has been reiterated time and again in subsequent decisions which have also been noticed by this decision.

24. The legal position being clear, the question to be answered is thus whether the father was unfit to be the guardian of the child. In that case, the respondents had contended that the father had re-married. The Court also considered whether ill-treatment of the child's mother during her lifetime even if assumed, would render him unfit. The Court held that re-marriage would not be a factor, and the allegation of abuse must be substantiated. In the absence of any evidence in that to indicate that the father was unfit, he was awarded custody. The relevant portions of the judgment read as follows:

'



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4. Under Section 25 the consideration which is to guide the Court is no doubt stated to be whether it will be for the welfare of the child to return to the custody of his guardian. It is, however, scarcely necessary to point out that the decision of that question depends upon the circumstances of each case and the relationship between the guardian and the ward when the application is made. Here the appellant is the father and natural guardian of the child. He is not only a person who is presumably most interested in the welfare of the child but he is also under the obligation of maintaining it suitably to his means. The appellant, as the maternal grandfather of the child, is also a person interested in the welfare of the child and his wife as the maternal grandmother is also in the absence of the mother, a proper person to look after the child. But they are under no legal obligation like the father to keep the child in their custody and maintain it suitably to their means. They can at any moment require the father to take over the child and the latter will be bound to do so. The rights and duties of the guardian of the person of an infant are clearly stated in Mayne's Hindu Law thus:

“The guardian has a prima facie right to the possession' of the infant, a right which arises out of his obligations in respect of his children. He cannot, therefore, be deprived of it, even by the desire of the minor himself except upon sufficient grounds. In the case of parents, especially, it is obvious that the custody of their children is a matter of greater moment to them than the custody of any article of property. But his guardianship is in the nature of a sacred trust and the father cannot, therefore, substitute another in his stead. He may entrust the custody and education of his children to another but the authority he thus confers is essentially a revocable authority, and, if the



welfare of his child requires it he can notwithstanding any contract to the contrary take such custody once more into his own hands. If, however, his authority has been acted upon in such a way as to create association or give rise to expectations on the part of the infants which it would be undesirable in their interests to disturb or disappoint, the Court will interfere to prevent its revocation. Mayne's Hindu Law Exn. 9 Para. 212.

5. Section 24 of the Guardians and Ward's Act also lays down clearly the duty of the guardian of the person of a ward thus

“A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education and such other matters as the law to which the ward is subject requires.”

6. It therefore follows that when the guardian of the person of a ward applied for the custody of the ward he is only asking the Court to help him to discharge the duty cast on him by law, with reference to his ward and it is for those who oppose such an application to make out that the welfare of the ward will be better served by its being kept out of the "custody of its guardian and retained in the custody of the person against whom the application is made. This onus according to the authorities is especially heavy when the guardian is the father of the child who as pointed out by their Lordships of the Privy Council in Beasant's case Annie Beasant v. Narayaniah (A.I.R.1914 P.C. 41) is both according to Hindu law and English law the natural guardian of his children during their minorities. He is charged with the duty of bringing them up properly. He has therefore a paramount right to the custody of his children of which he cannot be deprived unless it is clearly shown that



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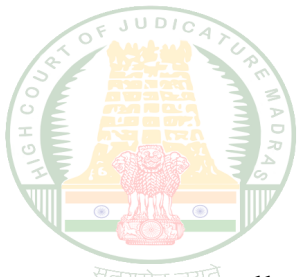
he is unfit to be their guardian. This is the view which has been clearly taken in the reported cases decided subsequent to Beasant's case : see Andiappa Pillai v. Nallendran Pillai ([1915] 39 Mad. 473) Satyanarayana v. V.L. Narasayamma (A.I.R. 1924 Mad 45) and Sakhdeo Rai v. Ramachandra Rao (A.I.R. 1924 All. 622).

.....

11.The learned District Judge observes as follows: Even considering the matter entirely from the point of view of the welfare of the minor it cannot be to the minor's welfare to estrange him from his own father at this tender age as will undoubtedly be the case if he continues under the guardianship of the respondent (appellant) between whom and the father there is little love lost.'

25. In the present case, there is an allegation in the cross examination of R1 dated 21.12.2022 that the appellant had stated that he would physically harm his wife and child. However, it has been elicited in that deposition that those allegations were never part of the counter or proof affidavit and hence we do not ascribe any importance to the same.

26. There has also been some discussion about the jewellery of Mrs.Shanthi which is in the possession of the Appellant. We record that appellant has made it clear even in his deposition dated 18.08.2022 that he is in possession of 28 sovereigns of gold (approx) of Mrs.Shanthi and that he is ready to return the same to the respondents. This is reiterated now as



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well.
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27. Learned counsel for the respondents for their part would categorically submit that they do not wish to take the jewellery of Mrs.Shanthi (according to them the quantum is 47 sovereigns) and the same may be retained by the appellant for the welfare of the child. We do not wish to delve further into this issue and leave this matter at that to be settled inter se the parties.

28. Incidentally, there is nothing on record to indicate that the maternal grandparents are Government servants. On the other hand, in the deposition of the appellant dated 19.09.2022, he has stated that his parents are Government servants.

29. We do not agree that the mere fact that the father is in full time employment would disentitle him from custody of the child. That would mean that no single parent holding a full time job would ever be suited to bringing up a child. Such a proposition is unacceptable and rejected outright. Undoubtedly, the young child needs attention, oversight and care. But what's to say that the appellant cannot put in place an arrangement that would balance his career with the pleasure and demands of child



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rearing? There is nothing to indicate that he would not rise to the occasion.

30. The argument that he is disinterested in the child does not appeal to us. We have, in paragraph 15 supra referred to the circumstances in which the appellant did not avail the right of visitation very regularly. The explanation tendered is not without merit, and visualizing, as best as we can, the situation from his perspective, we prefer to give him the benefit of doubt in this regard.

31. The child is seven years now and we know for a fact that there has been no effective bonding between father and son from November 2021 when Mrs.Shanthi passed away, till date. The child was with the parents till October 2021 when his mother passed away, and had been taken by the respondents a few days after the demise of Mrs.Shanthi. This Original Petition has come to be filed in July, 2022 nine months thereafter.

32. We find that the father has not wasted any time in pursuing his right to seek custody and has been pursuing the appeal seriously. This, in itself, is an indicator of his interest in the child. We thus conclude that the appellant is entitled to the custody of the child Sai Varun and we order so.

33. In view of the intervening time that might have created some



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distance between them, it is necessary that the child is eased into the company of his father and this must be done in a phased manner, also so his schedule in his school and extracurricular activities are not disturbed.

34. We had suggested that this happen over a period of one year, also for the reason that the academic year has commenced now and we do not see the wisdom of shifting the child to a new school overnight. New surroundings, friends, school and environment may be too much for a child to shoulder, all at once.

35. Also, while we have held that it is the father who should have custody, and we have not found him unfit in any way, we are equally clear that the presence of loving grandparents in the child's life is of paramount importance. The unique relationship between grandparents and grandchildren is summed up in the adage, evidently coined by a grandparent, that '*if we had known grandchildren would be so much fun, we would have had them first*'. Grandparents are veritable universities, and the lessons learnt by kids sitting on their laps and at their feet, are timeless and invaluable.

36. As a measure of enabling the above suggestions, we had asked



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the appellant to file a schedule of events including visitation, for the upcoming year and the following memo has been filed:-

'Memo filed by the counsel for the appellant

1. As per the direction issued by this Hon'ble Court by order dated 12.6.2025, it is submitted that for the current academic year, the appellant proposes to visit the child on the 1st and 3rd Saturday and Sunday every month. The appellant may be permitted to take temporary custody of the child during those two days, but he shall not take the child outside Chennai. Additionally, the appellant may be permitted to take the child during Diwali Vacations, Christmas vacations, quarterly and half-yearly vacations to Bangalore. The vacation schedule should be intimated to the appellant by the respondents, well in advance. Additionally, it is requested that the appellant and his family members may be given an opportunity to speak to the child through mobile/video conferencing at any time, except during school hours.

2. It is submitted that from the next academic year (after enrolling the child at Bangalore), the grand-parents as well as the extended family can visit the child at Bangalore on the 1st and 3rd Saturday as well as Sunday of every month. The grand-parents can take temporary custody of the child for those two days, provided that the child is not taken out of Bangalore.

3. The grand-parents can take the child to Chennai during the half-yearly and annual vacation every year. The period of vacation would be intimated by the appellant to the respondents once the education calendar for the year is fixed by the school at Bangalore.

4. It is open to the respondents/any extended family members to speak to the child through mobile/video conferencing at any time, except during school hours.

5. The afore-mentioned schedule is submitted as per the instructions given by the appellant.'



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38. A copy of the above suggestions contained in the memo has also been given to the respondents and the response is positive and in tune with the suggestions of the appellant, except that the respondents request company of the child during the Deepavali vacations also. The appellant does not resist their request. Accordingly, the arrangement as proposed by the appellant is accepted, except to the extent of the modification supra relating to Deepavali vacations and the parties are directed to adhere to the same scrupulously.

39. We fervently hope that the ensuing period of one year would forge new bonds, at the end of which there would be no requirement for visitation to be enforced by court intervention. Assuming that this does not happen, the appellant must ensure that the child has the full benefit of the attention, care and time of the respondents and other members of the extended family members of his mother.

40. This appeal is allowed. Custody of the child is entrusted to the Appellant. The schedule as above will spring into action forthwith. No costs.



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[A.S.M., J] [N.S., J]
10.07.2025

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Speaking order
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DR. ANITA SUMANTH,J.
and
N. SENTHILKUMAR.,J

sl/ssm

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