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A NO. 4452 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-12-2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

A NO. 4452 OF 2025

in

OP No. 708 of 2024

Nallathambi
S/o. Petchai,
No.26, Nehru Street,
Arunagirippattinam,
Devakottai 630 302.

Applicant(s)

Vs

C.Karuppiah
S/o. Chelliah,
No.8, CDN Nagar 14 Street,
Nerkundram, Chennai 600 107.
And also at, 35A, Nehru Street,
Arunagirippattinam, Devakottai 630 302.

Respondent(s)

PRAYER: Application filed under Order 14 Rule 8 of OP Rules read with Patent Act read with Section 13 of Letters Patent Act read with Section 4A(1) of Guardians and Wards Act, 1890, that the original petition filed by the Respondent herein in G.W.O.P.No.708 of 2024 may be transferred to the District Court, Sivagangai.

For Petitioner(s): Mr.S.Rajesh

For Respondent(s): Mr.S.V.Udaya Kumar



ORDER

This application has been filed by the applicant, who is the respondent in the main Guardianship and Wards Original Petition, seeking to transfer the case in G.W.O.P.No.708 of 2024 on the file of this Court to the District Court, Sivagangai District.

2. For the sake of convenience and clarity, the parties will be referred to as per their rank in the present application.

3. According to the applicant, the respondent had married his younger daughter, Palani. Out of their wedlock, three children were born namely Kaviya, who is 17 years old and the other two children, namely Jaishre and Vedha, aged about 15 and 5 years respectively. When the respondent was working in abroad, his wife Palani, who was affected by COVID and passed away. After her demise, the three children have been living with their maternal grandfather, who is the applicant, in Sivagangai District, right from their birth. The respondent has filed the main original petition, seeking appointment of sole guardian and permanent custody of the children. Now, the children are under the custody of the applicant, who is the maternal grandfather, they are all residing at Devakottai Town, Sivagangai District.



3.1. After the demise of Palani, the respondent had remarried one Selvi and settled in Dubai on account of his avocation. The mother of the respondent is residing at Nerkundram, Chennai. The 1st daughter of the respondent namely, Kaviya would become major on 26.09.2025 and the 2nd daughter is studying in Pethal Achi Girls Higher Secondary School at Devakottai and 3rd son is studying in Infant Jesus Metric Higher Secondary School, Trichy. All the three children are with the applicant, who has been maintaining and taking care of them. The respondent himself had executed Settlement Deed in respect of the properties in favour of all his children through two separate settlement deeds, appointing the applicant as the guardian of three children.

3.2. The applicant, who has been taking care of all the three minor children and it could be ascertained from the children with whom they would like to stay and continue for their welfare. Instead of having trial at Chennai, the trial may be conducted at Sivagangai, where the children are presently residing, which is near to the applicant's residence, and would reduce the physical hardship for the minor children. Therefore, for the benefit of the three children, the trial may be conducted at Sivagangai District. Further, travelling from Dubai to Chennai and from Dubai to Sivagangai District, would not make much difference to the respondent. However, the applicant, who is undergoing medical treatment, would face



difficulty in travelling to Chennai, which would affect his health and also the education of the minor children. Therefore, the original petition may be transferred to the District Court, Sivagangai District.

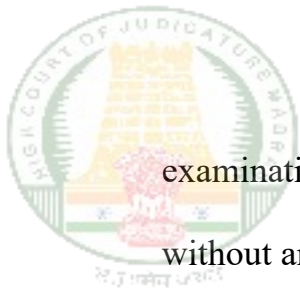
4. The respondent filed a counter, denying all the averments made in the affidavit, stating that the application is not maintainable and while admitting remarriage, it is false that the respondent has settled at Dubai. Merely for that reason, the respondent cannot be denied as guardian for his children. Apart from that, the children are not residing at Devakottai, but they are pursuing their education at different places and there is no necessity for the examination of children before this Court. Further, on considering the health of the applicant, it is just and necessary to cease and control the children from the applicant for their welfare and well being.

4.1. Further, it is stated that the respondent had purchased some golds and property in the name of the children and also made more deposits for the welfare of the children, the very fact was also known to the applicant and all the family members. The factual situation asserted by the parties will be the subject matter of the GWOP and nothing to do with the present application for the transfer of case and there is no necessity to transfer the GWOP to Sivagangai District and only to drag on the proceedings, the present application has been filed.



5. The learned counsel for the applicant would submit that the applicant is the respondent in the main Petition, and the respondent herein has filed the original petition to appoint him as a sole guardian and to grant permanent custody of the three children. In fact, the respondent, after his 2nd marriage has settled in Dubai along with 2nd wife and son. Now the children are under the care and custody of the applicant and they are all residing at Devakottai, Sivagangai District. Therefore, he submitted that the respondent ought to have filed the petition at Sivagangai instead of filing the petition before this Court. It is very difficult for the applicant to travel from Sivagangai to Chennai to conduct the case, since he is taking care of the three children, and is unable to travel such a long distance. If the matter is transferred to the District Court, Sivagangai, no prejudice would be caused to the respondent, as he has to travel from Dubai to Sivagangai. Therefore, he prayed to allow this application.

6. The learned counsel for the respondent would submit that the present application is not maintainable in view of the law laid down by the Full Bench of this Court reported in *Annapoorani Vs. Vijay*. The averments regarding 2nd marriage of the respondent is true, and it is false that the respondent is settled in Dubai. It is also submitted that all the three children are pursuing their education in different places. The applicant need not bring the children for each and every hearing and the children need not to travel from Sivagangai to Chennai. The



examination of the applicant would be completed on the date fixed by this Court without any excuses, which would reduce the travel of the applicant.

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7. Further, he submitted that claiming custody or guardianship of the three children and their properties by the applicant is illegal under the Guardians and Wards Act, and also submitted that the applicant is capable of travelling to Chennai to sign the affidavit in the petition, and that travelling again for the examination of the witness need not be a palpable one to the applicant. It is also submitted that the present application is filed only to drag on the proceedings. Therefore, he submitted that the application is liable to be dismissed.

8. Heard both sides and perused the materials available on record.

9. It is an admitted fact that the three children are under the care and custody of the applicant and are residing in Devakottai, Sivagangai District. The respondent is presently residing in Dubai and he has filed the Original petition before this Court. No doubt, as per the judgment of Full Bench of this Court reported in *Annapoorani Vs. Vijay*, this Court has jurisdiction to entertain the Guardianship and Wards Original Petition. No doubt, the District Court, Sivaganagai, also having jurisdiction to try the original Petition. Since the children are residing at Devakottai, Sivagangai District and are under the care and custody



of the applicant, it is very difficult for the applicant to travel from Sivagangai to Chennai, whereas, the respondent is capable of travelling from Dubai to Sivagangai.

10. Considering the above facts and circumstances of the case, and for the convenience and welfare of the three children, as well as to avoid hindrance to the applicant in travelling from Sivagangai to Chennai, it is appropriate to allow this application. The Original Petition is therefore ordered to be transferred from the file of this Court to the District Court, Sivagangai.

11. Accordingly, this application is allowed.

04-12-2025

Jd
Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
To
The District Court, Sivagangai.



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