



WEB COPY

OP No. 99 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-01-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

OP No. 99 of 2024

K.Gopinath S/o.G.Kumar, No.26/22,
Mangapathy Street, Pattalam, Chennai - 600 012.

..Petitioner(s)

Vs

S.P.Thamarai Selvi D/o.M.Palani,
No.313/74, Melpatti Ponnappan Street,
0Perambur, Vyasarpadi Post, Chennai - 600 012.

..Respondent(s)

PRAYER:- The Original Petition has been filed under Section 25 of Guardians and Wards Act, 1890 read with Order XXI Rule 2 and 3 of the Original Side Rules praying to grant the petitioner permanent custody of the minor child G.Keerthivasan born on 06.07.2012, now aged about 11 years.

For Petitioner(s): C.P. Sivamohan

For Respondent(s): M/s. N. Ramachandran

ORDER

This Original petition has been filed by the petitioner to grant him permanent custody of the minor child G. Keerthivasan aged about 11 years.

2. The *case of the petitioner* is that, he is the husband of the respondent and their marriage was solemnised on 11.09.2011 as per Hindu Rites and Customs Act. Due to the wedlock, a male child namely G. Keerthivasan was born on 06.11.2012. Due to some misunderstanding between the parties, both the petitioner and the respondent are residing separately and now the minor



child is under the custody of the respondent mother. The respondent willfully neglected the petitioner and left the matrimonial home along with child. The respondent has filed a petition for divorce in O.P. No.2166 of 2019 on the file of the I Additional Family Court, Chennai. The petitioner is ready and willing to live with the respondent, but she refused to live with the petitioner. The minor child is very affectionate with the petitioner. The petitioner being the father is entitled to have custody of the child. The petitioner, being the father, alone can provide the child emotional support and love all that he needs. The respondent's attitude in disallowing the petitioner to meet the minor son is contrary to the best interest and welfare of the child. Therefore, the petitioner filed this petition seeking custody of the minor son.

3. The respondent filed a counter denying the allegations made in the petition. However admitted the relationship between the parties and the minor son born to the petitioner and the respondent. During September 2015, the petitioner himself voluntarily left the respondent and the child at her father's home. The petitioner permanently deserted both the respondent and the minor child for more than 4 years. Therefore, she filed a petition for dissolution of marriage in H.M. O.P. No.2166 of 2019 on the file of the I Additional Family Court, Chennai on the ground of cruelty and desertion and the same was allowed on 16.08.2022. But no any appeal has been preferred as against that order and now the petitioner and the respondent are residing separately for more



than 8 years and the minor child is growing under the custody of the mother and she is only taking care of the minor child from his birth. The respondent never prevented the petitioner from seeing the child at any point of time and the petitioner himself deserted the child and the respondent and now filed this petition with false allegations. The child himself has not remembered the face of the petitioner, since the petitioner left the child and the respondent during September 2015, when the child was aged about 3 years and after a long period of 8 years, the petitioner has now filed this petition and there are no grounds to grant custody of the child to the petitioner. Therefore, the petition is liable to be dismissed.

4. In order to prove the case of the petitioner, on the side of the petitioner, PW1 was examined and Ex.P.1 to Ex.P.4 were marked. On the side of the respondent, RW1 was examined and no documents were marked.

5. The learned counsel appearing for the petitioner would submit that the petitioner is the father of the minor child and the respondent, after giving birth to the minor child, without any valid reasons, left the matrimonial home in the month of September 2015 and thereafter, she filed a petition for divorce in H.M.O.P. No.2166 of 2009 on the file of the I Additional Family Court, Chennai and the same was allowed on 16.08.2022 and the marriage between the parties was dissolved. Now, the child is under the custody of the respondent



mother. The respondent has not allowing the petitioner to see the child. The petitioner, being the father is entitled to have custody of the minor child. He is capable of bringing the child in a good manner. If the child is growing only with the mother, his future will be spoiled. The respondent mother is not a capable person to maintain the minor child and therefore, he has filed this original petition. In order to prove his case, the petitioner was examined as PW1 and Ex.P.1 to Ex.P.4 were marked. The evidence of PW1 has clearly established his case and the petition has to be allowed and the custody of the minor child is to be given to the petitioner.

6. The learned counsel appearing for the respondent would submit that the petitioner neglected and deserted the respondent and her child. He left the family during September 2015. At that time, the child was aged about 3 years and after a period of 8 years, he has now filed this petition. Now the child is comfortable with the mother and he is under the care and custody of the respondent mother. Therefore, all of a sudden, the custody of the child cannot be granted to the petitioner father after 8 years and the child is studying in a reputed School and the respondent is only providing good education and she will bring the child in a good manner with all respect. There are no grounds to grant custody of the minor child to the petitioner. In order to prove her case, the respondent was examined as RW1 and she has clearly deposed about the custody of the minor child and there are no grounds to allow the petition and the same is liable to be dismissed.



7. This Court also perused the evidence and the entire records.

8. The *point for consideration* in this case is *whether the Plaintiff is entitled for custody of minor child.*

9. In this case, it is an admitted fact that the marriage between the petitioner and the respondent was solemnized on 11.09.2011 and thereafter, a male child namely G. Keerthivasan was born on 06.11.2012 and due to misunderstanding between them, they were separated from September 2015 onwards and already the respondent filed a petition for dissolution of marriage and the said petition was allowed through an order dated 16.08.2022 in H.M.O.P. No.2166 of 2009 on the file of the I Additional Family Court, Chennai and no appeal has been preferred as against the said decree of divorce. Therefore, the said decree is final. As per the said decree, the marriage between the petitioner and the respondent was dissolved.

9. It is an admitted fact that from September 2015 onwards, the child is under the care and custody of the respondent mother and he is studying in a reputed School. The petitioner father has not taken any steps for the past 8 years and even after divorce granted by the Family Court, the petitioner has not taken any steps for the custody of the minor child. The said decree of divorce was granted on 16.08.2022 and now the petitioner has filed this original petition in the year 2024. Though the petitioner has deposed about his case by



supporting evidences, there are no grounds to remove the custody of the minor child from the respondent mother. From the birth of the minor son, he is growing under the care and custody of his mother and all of a sudden, he cannot be separated from the mother. It is well settled law that as far as the custody of the minor child is concerned, the paramount consideration is welfare of the minor child. Since the minor child is growing with his mother since his birth, it is not appropriate to separate the child from the mother, without any valid reasons. There are no grounds to remove the custody of the minor child from the respondent. However the petitioner, being the father, is entitled for visitation rights and the respondent has also not seriously disputed for the visitation rights of the petitioner.

10. In view of the above said discussions and observations, this Court is of the opinion that this original petition is liable to be dismissed and the petitioner can be granted visitation rights.

11. Accordingly, the respondent mother is directed to bring the minor child on the *1st and 3rd Saturdays of every English Calendar month at 10.30 a.m. at Child Care Centre attached to the Family Court, Chennai* and the petitioner father can spend time with the child *till 1.30 p.m.* and thereafter, the respondent mother can take back the minor child with her custody.



12. With the above said directions, this original petition is ***disposed of***.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MJS

APPENDIX:

List of Petitioner side Witnesses:

PW1 : Mr. K. Gopinath

List of Petitioner side Documents:

Exhibit No.	Date	Description of Documents
Ex.P.1.	-	Photocopy of PW1's Aadhar Card.
Ex.P.2	-	Computer generated Birth Certificate of Minor G. Keerthivasan.
Ex.P.3	16.08.2022	Certified copy of the Decree and Judgment in H.M.O.P. no.2166 of 2009 passed by the I Additional Family Court, Chennai
Ex.P.4.	-	Certificate under Section 65B of the Indian Evidence Act, 1872.

List of Respondent side Witnesses:

RW1 : Ms. P. Thamarai Selvi.

List of Respondent side Documents: NIL

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P.DHANABAL, J.

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