



O.P.No.290 of 2021

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ABDUL QUDDHOSE, J.

This petition has been filed under Section 25 of Guardian & Wards Act, 1890, r/w Order 21 Rule 2 & 3 of Original Side Rules seeking for appointment of the petitioner as the legal guardian of his minor daughter V.Viyona, having born out of his wedlock with Isaivani.

2. The minor child who was born on 05.02.2017. On 17.12.2019, the petitioner's wife Isaivani committed suicide by hanging herself and died three days later at Kilpauk Medical Hospital, Chennai -10. Ever since the death of Isaivani, the minor child V.Viyona is in the custody of the respondent, who is the petitioner's mother in law. In such circumstances, this petition has been filed seeking for permanent custody of the minor child V.Viyona.

3. Notice has been duly served on the respondent in O.P.No.290 of 2021 and despite service of notice, the respondent has not entered appearance till date or engaged any counsel to represent her interest.



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WEB COPY 4. This Court, by way of abundant caution, also directed the learned counsel for the petitioner to serve one more notice on the respondent by its Order dated 02.12.2021.

5. Today, the learned counsel for the petitioner has filed an affidavit of service along with the delivery report obtained through Internet. As seen from the delivery report, the notice sent to the respondent has been returned with an endorsement “unclaimed” which amounts to deemed service under the General Clauses Act, 1897. Therefore, it is clear that the respondent is not interested in contesting this petition.

6. Admittedly, the respondent is only the mother in law of the petitioner and the petitioner's wife also died on 20.12.2019. Before the Learned Master, evidence was recorded on the side of the petitioner. The petitioner, being the father of the minor child V.Viyona was examined as P.W.1. He has reiterated the contents of the petition filed in support of the petition No.290 of 2021. Through P.W.1, the following documents were marked as exhibits:-



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<i>Exhibits</i>	<i>Nature of the document</i>
Ex.P-1	Original of the Marriage Invitation between the petitioner and Isaivani dated 29.04.2016.
Ex.P-2	Original of Marriage photos as per Hindu rites and Customs.
Ex.P-3	Original of Marriage photos as per Christian rites and Customs.
Ex.P-4	Copy of the printout Birth Certificate of V.Viyona(Minor) dated 03.04.2017.
Ex.P-5	Copy of printout Death Certificate of Isaivani dated 20.12.2019.
Ex.P-6	Certified copy of Revenue Divisional Officer cum Executive Sub-division Magistrate Inquiry Report dated 27.12.2019.
Ex.P-7	Certified copy of Final Report filed by R8 Vadapalani police station to the XVII Metropolitan Magistrate Court, Saidapet, Chennai dated 08.12.2020.

7. As seen from the evidence available on record, it is clear that the petitioner is the father of the minor V.Viyona, who was born on 03.04.2017 to the petitioner out of the wedlock with Isaivani.

8. The petitioner's wife is also no more as she committed suicide by hanging herself on 17.12.2019. The custody of the minor is presently with the respondent who is the petitioner's mother in law. It is also informed by the learned



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counsel for the petitioner that only in December 2020, the petitioner saw his minor daughter V.Viyona.

9. After giving due consideration to the evidence available on record, this Court is of the considered view that the welfare of the minor V.Viyona will be adequately protected only by the petitioner, who is her father and not by the respondent who is the mother-in-law of the petitioner, who has not chosen to defend this petition despite having received the notice of the same.

10. The mother of the minor child Isaivani is also dead and the Revenue Divisional Officer cum Executive Sub-division Magistrate, Chennai by report dated 27.12.2019, which has been marked as Exhibit P6, also reveals that a finding has been given that the death of Isaivani was not due to dowry harassment.

11. On the basis of the said report, the Vadapalani Police Station has also closed the First Information Report registered against the petitioner earlier for the offence punishable under Section in 309 IPC. Learned counsel also submits that the petitioner is also willing to settle one of the properties in favour of the minor child



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12. The said statement is also recorded. After giving due consideration to the pleadings as well as the evidence available of record, this Court is of the considered view that the minor child V.Viyona will be best protected under the permanent custody of the petitioner, who is her father.

13. For the foregoing reasons, this Court grant the relief sought for by the petitioner and thereby grant the permanent custody of the minor child V.Viyona to the petitioner. Accordingly, this petition is allowed as prayed for.

20.12.2021

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