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C.M.A.No.3870 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.02.2026

Pronounced on: 27.03.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No. 3870 of 2025

1. Edwin Arockiaraj

2. Juliet Mary

...Appellants

Vs.

1. Akasdin Selvakumar

2. Parvathi

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 47 of the Guardians and Wards Act, to set aside the order dated 03.11.2025 made in G.W.O.P. No.42 of 2025 on the file of the District Judge of Nagapattinam.

For Appellants : Mr.V. Pavel

For Respondents : Ms. Rakshitha

JUDGMENT

This appeal is preferred against the order dated 03.11.2025 made in G.W.O.P. No.42 of 2025 on the file of the District Judge of Nagapattinam.



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2. The appellants have filed an application under Section 9 read with 11 of Guardians and Wards Act, 1890, to declared the appellants / petitioners as guardians of minor child, namely Joewin Madharasi.

3. According to the appellants, the former husband of the 2nd respondent, namely Athees had deserted and abandoned her in the year of 2016 with a daughter. Being a sympathetic soul, the 1st respondent has been maintaining the 2nd respondent and her fatherless daughter from the year 2024 and leading life with the 2nd respondent as live in relationship. Out of their nuptial life, the 2nd respondent begot a female child, namely, Joewin Madharasi. The 1st respondent is already having 2 children independently out of his earlier marriage. The respondents, with good intention to promote their child with health and wealth and high education, had given their consent to give permanent custody of their child Joewin Madharasi to the appellants as her guardians without any consideration, coercion or force with free will, knowledge and consent. The respondents had also given the custody of the child to the appellants on 11.06.2025 and to that effect a deed was executed between them one month before and the same was notarized. From that day



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onwards, the appellants are taking utmost care as natural parents.

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4. The respondents have filed a petition in I.A No. 1/2025 under Order XXIII Rule 3 of CPC to record the respondents consent. In the said petition, they have stated that they received the notice about the petition filed by the appellants for permanent custody and appointment of Guardian in respect of the Minor child. Further they have stated that there is no collusion, coercion and considerations in this regard and also there will be no prejudice caused to any of them including the Minor.

5. However, the learned District Judge, dismissed the petition filed by the appellants by holding that the Christian Personal Law does not permit for adoption and that the appellants / petitioners have to file an application for adoption as per the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 and further held that the child was born on 05.05.2025 at District Head Quarters Hospital, Kumbakonam, and therefore, the District Court, Nagapattinam, has no jurisdiction to entertain the said petition. Further it was held that the natural guardians cannot be termed as unfit as contemplated under Section 19(b) of the Guardian and Wards Act, 1890.



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Aggrieved by this, the present appeal is filed by the appellants.

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6. The learned counsel for the appellants / petitioners would submit that, the court below failed to consider the incapability of the respondents to bring up the minor child and also failed to see that the appellants / petitioners are economically in better status. While so, the trial court erroneously dismissed the petition filed by the appellants, warrants interference by this Court.

7. Admittedly the appellants have filed the petition under Section 9 read with 11 of Guardian and Wards Act, 1890, praying to declare the petitioners as guardians of minor Joewin Madharasi, aged about 3 months at the time of filing the petition, having born on 05.05.2025 and by religion of Christian and in the custody of the appellants.

8. The personal law of Christians does not recognise adoption and, here too, an adoption can take place from an orphanage by obtaining permission from the Court under Guardians and Wards Act, 1890. A Christian has no adoption law. Since adoption is legal affiliation of a child, it forms the subject matter of personal law. Christians can take a child under the said Act only



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under foster care. The foster parents have to approach the Court under the

Guardian and Wards Act, 1890. Once a child under foster care becomes major, he/she is free to break away all his/her connections. Therefore, the Christian parents in India can adopt a child through the Juvenile Justice (Care and Protection) Act, 2015 (JJ Act) or the Guardian and Wards Act, 1890, as personal law prohibits it. The procedure involves registration via CARA, home status and obtaining a court order for guardianship / adoption, providing legal rights akin to a biological child. Filing petitions under Guardian and Wards Act, 1890 for adoption, will only grant guardianship and not a legal parent child relationship. Under Guardian and Wards Act, relationship ends when the child turns major and the child does not automatically inherit from parents. JJ Act, 2015, ensures that the adopted child gets the same rights as a biological child, regardless of the parents religion. Section 19(b) of the Guardian and Wards Act, 1890, deals with restrictions on the court's power to appoint a guardian when a parent is alive. The Court cannot appoint a guardian for a minor if the minor's father or mother is living and is not deemed unfit by the Court. However, the Court can appoint third party as a guardian if it is found that the living parent is unfit to be a guardian of the person of the minor. While Section 19 imposes restrictions, the overall



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principle is that, the welfare of the minor is paramount consideration.

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9. The present petition is filed by the appellants /petitioners 1 and 2 under Section 9 read with 11 of Guardian and Wards Act, 1890, praying to declare them as guardians of minor child, namely Joewin Madharasi born on 05.05.2025 and now in the custody of the appellants. At the time of filing the petition, the child was 3 months old. According to the appellants, the former husband of the 2nd respondent, namely Athees, had deserted and abandoned her in the year of 2016 with a daughter. Thereafter, the 1st respondent is now in live in relationship with the 2nd respondent and they have begotten a female child, namely Joewin Madharasi. Since the 1st respondent is already having two children out of earlier marriage and with an intention to give a good life for the child Joewin Madharasi, consented to give permanent custody of the child to the appellants as her guardian without any consideration, coercion or force with free will, knowledge and consent. The respondents have given custody of the child to the appellants on 11.06.2025 and to that effect a deed was executed between them and the same is also notarized. The respondents have filed a petition in I.A No. 1/2025 under Order XXIII Rule 3 of CPC to record the respondents consent.



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10. As stated supra, the Christian foster parents can file a guardianship petition under Section 9 read with 11 of the Guardian and Wards Act 1890 before the District Court to appoint them as guardian for the minor child. The primary focus is the welfare of the child. The legal guardianship grants authority to the Court for the child's person and property. As per Section 9 of the Act, the foster parents has to file a petition under the said Act before the District Court or the Family Court where the minor child ordinarily resides. The courts have emphasised that an application regarding the guardianship of the person of a minor must be filed in the District Court where the minor ordinarily resides. 'Ordinarily resides' means mere temporary residence. The Court cannot refuse jurisdiction under Section 9 based on expediency or convenience. The Court, where the child resides must entertain the application. In the present case, according to the parties, the child is now in the custody of the appellants residing at Nagapattinam. Therefore, the District Court at Nagapattinam has jurisdiction to entertain the said petition.

10.1. Under Section 19(b) of the Guardian and Wards Act, 1890, a Court cannot appoint a guardian for a minor if the father or mother is living, unless that parent is deemed 'unfit' in the opinion of the Court. The Act does not



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provide an exhausted list of criteria for 'unfitness', leaving it to judicial discretion based on the welfare of the child. Financial difficulty alone cannot make a natural guardian unfit. However, the final determination of 'unfitness' rests on what is best for the child's welfare. Without considering the above facts, the learned District Judge, erroneously dismissed the said petition by holding that the same has been filed for adoption of the child and that the District Court, Nagapattinam, has no jurisdiction to entertain the said petition, since the child was born at Kumbakonam, which warrants interference by this Court.

10.2. However, for adoption of the child, the appellants / petitioners have to necessarily follow the procedure laid down in the JJ Act, 2015 and the Rules and Regulations framed thereunder. Ex.P1 adoption deed is not valid under the eye of law. Since the present petition is filed by the petitioners only to declare them as guardians of the minor child, the Court has to conduct an enquiry into the financial status, home environment and intention of the foster parents to ensure the child's welfare is paramount and upon satisfaction, the Court can issue guardianship certificate.



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11. In the result, the order passed by the learned District Judge in

GWOP No. 42/2025 is set aside and the matter is remitted back to the District Court, Nagapattinam, for fresh consideration of the petition and to dispose the same within a period of two weeks from the date of receipt of a copy of this order / uploading of the order. The appellants / petitioners shall produce all relevant documents, such as, birth certificate of the minor child, proof of residence, proof of relationship / custody and declaration of willingness to act as a guardian signed by the foster parents, attested by two witnesses. No costs.

27.03.2026

bga

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To

1. The District Judge, Nagapattinam.

2. The Section Officer, VR Section,

High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI, J.

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**Pre delivery judgment in
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