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O.S.A. No.67 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

O.S.A. No.67 of 2026 and
C.M.P. No.7436 of 2026

M.Mathivathani @ Divya

... Appellant

Versus

T.S.Aravindan

...Respondent

Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent, to set aside the judgment and decree passed by this Court in G.W.O.P. No.39 of 2024 dated 26.08.2025 so far as the portion of the order granting interim custody of the minor child to the respondent-Father during the summer holidays including its extended holidays, if any and thereby, set aside such portion passed in G.W.O.P. No.39 of 2024 dated 26.08.2025.

For Appellant	:	Mr.M.Aravindan
For Respondent	:	Ms.A.B.Reehana Begum



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ORDER

(Order of the Court was made by P.VELMURUGAN, J.)

This Original Side Appeal has been filed to set aside the judgment and decree passed by this Court in G.W.O.P. No.39 of 2024 dated 26.08.2025 insofar as the portion granting interim custody of the minor child to the respondent-Father during the summer holidays including any extended holidays and to set aside such portion.

2. The learned counsel for the petitioner submitted that the respondent herein had filed a petition before this Court in G.W.O.P. No.39 of 2024 seeking to appoint him as the guardian of the minor child Dhakshith Seyon.A, born on 03.06.2020 (now aged 5½ years) and to direct the appellant herein to handover the custody of the minor child to him. Though the learned Judge dismissed the said O.P. by order 26.08.2025, however, granted visitation rights by way of interim custody of the child to the respondent during summer holidays and its extended holidays if any as follows:

“17. In fine, the O.P. stands dismissed on the following terms;

i) The custody of the minor remains undisturbed



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unless change in above circumstances;

ii) The petitioner would be entitled to have the custody of the minor child during the summer vacation and the extended holidays.

iii) The petitioner would have a right of visitation of the minor child during the major festivals and also on the birthday of the minor child.

iv) The respondent shall provide video conferencing platform to the petitioner enabling him to have video conferencing with the minor child on every Wednesdays and Saturdays between 6.00 p.m. and 8.00 p.m. and shall ensure that such video conferencing would be made effectively at least for a minimum of 30 minutes per day.”

The learned counsel for the appellant-mother submitted that the learned Judge has committed error apparent on the face of the record in granting interim custody of the minor child to the respondent-father during summer holidays particularly when the learned single Judge had dismissed the O.P. filed for guardianship and permanent custody of the child in the best interest and welfare of the minor child, as the respondent is not a fit person to have the custody of the child. The learned Judge failed to interact with the child before granting the interim custody of the minor child to the respondent



during the summer vacation which would have established the pragmatic psychological condition of the child towards the respondent-father. The learned Judge having rightly held that the respondent-father had not taken any sincere steps to meet or engage with the child from August 2021 i.e. from the child was one year old, until filing of the O.P. and there is no evidence to demonstrate that placing the child in the custody of the respondent-father would be in the child's best interest, ought not to have granted interim custody of the child. Even the respondent-father had not sought for any interim custody and thereby, the learned Judge exceeded he jurisdiction vested by ordering interim custody of the child to the respondent, during summer vacation, which is beyond the scope of the petition. The learned Judge having dismissed the O.P. for the reasons stated above and granting interim custody of the child during the summer vacation, had exceeded the jurisdiction vested in it, which resulted in miscarriage of justice.

2.1 The learned counsel further submitted that the learned Judge failed to consider the fact that the child has never been away from the appellant-mother from his birth and has not stayed with his father/respondent from being a one year old toddler and therefore, the order of interim custody of



the child with the respondent-father during summer vacation, will be shocking to the child and affect his mental health. The appellant-mother had established before the Court that the child will be in a better condition if the custody of the child continues to be with the appellant-mother. The respondent-father did not spend any quantum to the child for the day-to-day expenses and educational expenses etc. and as such, it is well established that the respondent-father does not have any real intention to have the interim custody of the child, rather it is evident that the respondent-father filed the O.P. only to harass the appellant-mother. The learned Judge having rightly held that the O.P. has been filed by the respondent only as a counter action to the H.M.O.P. filed by the appellant seeking dissolution of the marriage on the grounds of cruelty and desertion, erred in allowing the respondent to have the interim custody of the child during summer vacation.

2.2 The learned counsel further submitted that the learned Judge miserably failed to consider the oral evidence of the respondent-father made during cross examination before passing the impugned order. The respondent-father had the audacity not only of committing an offence by receiving dowry from the petitioner-mother and her family members, but had the audacity of admitting and boasting the same before this Court in his



pleadings as well as during the cross examination. The learned Judge ought to have considered that the child cannot be put on custody when the respondent-father and his mother had been involving in quarrel with the tenants which resulted in causing serious injury of 8 stitches in the head and been admitted in hospital under the intensive care unit and such circumstances are not conducive situation for the child to reside with the respondent-father during summer vacation. Therefore, the present appeal has been filed seeking to set aside the portion of the order granting interim custody of the minor child to the respondent-father during the summer holidays.

3. The learned counsel for the respondent-father submitted that after the marriage and the birth of the child, the appellant-mother left the matrimonial home voluntarily and took the child to her parent's house. The respondent along with his parents went to the appellant's parents' house to persuade her to return, but the request was not heeded. The respondent waited for nearly two years and during which time, he issued a legal notice seeking reunion, which was neither complied with nor replied to and it was the appellant who had not allowed the respondent-father to meet his child. The respondent is a loving and dedicated father. As a father and natural



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guardian, the respondent has the right to have the visitation right and interim custody of the child. The learned counsel further submitted that the appellant only had voluntarily left the matrimonial home with the child and it is not as if the respondent abandoned the child and that there is no material to show that the respondent is acting against the interest and welfare of the child. Though there is some adverse remarks against the respondent and the learned Single Judge dismissed the Guardian O.P. by considering the age of the child, however granted the visitation right and interim custody of the child to the respondent. Since the respondent is one of the natural guardians, no prejudice would be caused to the appellant. Even though the Guardian O.P. was dismissed and only the visitation right and interim custody was granted to the respondent only for a limited period i.e. during summer vacation, the appellant has challenged the same, which would clearly show the mind of the appellant that only to wreak vengeance, she has filed this appeal. Therefore, there is no merit in this appeal and the same is liable to be dismissed.

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

5. Admittedly, the appellant is the mother of the child and the respondent is the father of the child and both of them are natural guardians.



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According to the appellant, the child has been staying with her since birth and the respondent had not taken any sincere steps to meet or engage with the child since the child was one year old and until filing of the O.P. According to the respondent, though he had taken steps to bring back the appellant and the child to the matrimonial home, the appellant refused to come and live with the respondent and instead she filed a O.P. for divorce and the same is pending and therefore, with no other option, except to file the Guardian O.P. for appointing him as a guardian to the child, he filed the Guardian O.P., but the learned Single Judge dismissed the same, however, granted visitation right and interim custody of the child during summer vacation.

6. Admittedly, the respondent is none other than the biological father of the child and he is also one of the natural guardians. Though there is no material to show that the respondent abandoned the child or acted against the welfare and interest of the child, considering the age of the child, the learned Single Judge, dismissed the O.P. filed by the respondent and allowed the child to remain with the mother, however granted visitation right and interim custody of the child to the respondent during summer vacation since the respondent is one of the natural guardians as well as biological father of the



child.

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7. While deciding the Guardian O.P., the interest and welfare of the child are paramount consideration. As per the Hindu Minority and Guardianship Act, if the child is below the age of 5 years, preference would always be given to the mother. Therefore, the learned Single Judge dismissed the Guardian O.P. filed by the respondent-father, however, granted him visitation right and interim custody of the child during summer vacation since the learned Single judge did not find any adverse attitude of the respondent towards child and there was no proof to show that the respondent was acting against the interest and welfare of the child.

8. Though the learned counsel for the appellant contended that the child is not ready to move with the respondent-father and that the learned Single Judge failed to ascertain the child's willingness before granting interim custody, the fact remains that the child is only about 5½ years old and has been with the appellant-mother since birth, naturally the mother would have influenced the child. The respondent-father is also a natural guardian and biological father of the child. Therefore, he has every right to visit the child and to have interim custody. Initially, the child may experience some inconvenience, but subsequently, if moved with the father,



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the child would be comfortable.

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9. Under these circumstances, this Court finds no reason to interfere with the order passed by the learned Single Judge.

10. Accordingly, this Original Side Appeal is dismissed. However, considering the relationship of the parties, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

[P.V.,J.] [K.G.T.,J.]
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