



C.M.A.(MD)No. 571 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.01.2026

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No. 571 of 2022

and

C.M.P(MD)Nos.4954 of 2022 & 3978 of 2023

M.Jeya

... Appellant/ Respondent

Vs.

A.Rajesh

...Respondent / Petitioner

PRAYER : Civil Miscellaneous Appeal filed under Section 47 of Guardian and Wards Act, to set aside the order dated 06.04.2022 made in G.W.O.P.No.343 of 2019 on the file of the Family Court, Kanniyakumari District at Nagercoil and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.V.Meenakshisundaram

For Respondent : Mrs.B.Deepa



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JUDGMENT

WEB COPY (Judgment of this Court was delivered by **R.POORNIMA, J.**)

The Appellant/Respondent/Grand mother has filed this Civil Miscellaneous Appeal against the order dated 06.04.2022 passed in G.W.O.P.No.343 of 2019 on the file of the Family Court, Kanniyakumari District at Nagercoil.

2.Brief case of the petition before the lower Court is as follows:

(a)The petitioner, who is the father of the minor child, namely R.G. Sai Rithin, filed the petition under Sections 7 and 10 of the Guardians and Wards Act, 1890, seeking appointment as guardian and for custody of the minor child.

(b)The petitioner is the son-in-law of the respondent. He married the respondent's daughter, Gayathiri, on 03.06.2018. Thereafter, they resided together at the petitioner's house. Out of the wedlock, a male child, R.G.Sai Rithin, was born on 29.03.2019. On 31.05.2019, due to ill health, the petitioner's wife passed away at KIMS Hospital. At the instance of the respondent, the final rites were conducted at the respondent's residence on 01.06.2019. It was stated that, as per custom,



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the minor child was to remain at the respondent's house for fifteen days, for which the petitioner also accepted. Thereafter, the respondent agreed to hand over custody to the petitioner.

(c) The respondent is employed as a Draftsman in the Public Works Department. She has limited family support. Her mother, aged about 78 years, had undergone heart surgery and is unable to take care of the child. The respondent, being employed, leaves for work during the day, and the child is presently under the care of a known person.

(d) After completion of the fifteen-day's ceremony, the petitioner requested the respondent to hand over the custody of the minor child. However, the respondent refused. Subsequent efforts made through relatives on 25.08.2019 also proved unsuccessful. The petitioner contended that he, being the natural guardian, is hale and healthy, resides with his parents and brothers, and is fully capable of maintaining and caring for the child. Hence, he prayed for allowing the petition.

3. The respondent denied the allegations contending in the petition. She further contended that she had advanced a sum of Rs.2,07,000/- to the petitioner through a loan obtained from Axis Bank, and an additional sum of Rs.1,00,000/- obtained through a Self Help



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Group, alleging that the petitioner was unemployed and had failed to repay the amounts. She further alleged that the petitioner was addicted to alcohol and squandered money. According to the respondent, the petition was filed only to exert pressure on her.

4. The respondent further alleged that the petitioner had compelled her daughter to reside at his house soon after child's birth, failed to properly care for her, and that such neglect resulted in infection leading to her death. She stated that the minor child had continuously residing with her. During the petitioner's care, the child allegedly suffered from pneumonia and dengue fever, after which the respondent took over the custody of the child and ensured proper treatment.

5. The respondent also contended that following her daughter's demise, the petitioner initially refused to take custody of the child. She asserted that her daughter had expressed concern regarding the child's safety in the petitioner's house. Allegations were also made regarding the petitioner's attempt to remarry and purported intention to give the child in adoption. Accordingly, she sought dismissal of the petition.



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6. During trial, the petitioner examined himself as P.W.1 and marked Exs.P1 to P7. The respondent examined herself as R.W.1 and marked Exs.R1 to R5.

7. The Trial Court, upon consideration of the evidence and records, allowed the petition, appointed the petitioner as guardian of the minor child, and granted visitation rights to the respondent.

8. Aggrieved by the said order, the present Civil Miscellaneous Appeal was filed by the respondent/appellant challenging the appointment of the petitioner as guardian and the direction to hand over custody.

9. The primary contention of the appellant/respondent is that the petitioner is unemployed and resides in a small house unsuitable for the child's upbringing. It was further alleged that the petition was filed with ulterior motives.

10. The parties are referred to as per their ranking before the Trial Court.



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11. Upon perusal of the records, it is evident that the petition was filed soon after the petitioner's wife's demise. The respondent admitted during cross-examination that she had arranged the marriage after being aware of the petitioner's family background. She also admitted that her daughter had resided at the petitioner's house during her illness. The allegation that the petitioner's neglect caused the daughter's illness remains unsubstantiated. The respondent further admitted that she is employed and leaves the child in the care of others during working hours.

12. Though the respondent produced documents evidencing loans obtained by her, no material was placed to establish that the petitioner alone borrowed money from her. The contention regarding the petitioner's house being small is untenable, particularly when the respondent's daughter resided there until her death. The further contention of the respondent that petitioner enter second marriage after the demise of the first marriage also not proved

13. It stands established that the petitioner is a young and capable individual, residing with his family, and able to care for the



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child. During interaction, the minor child expressed no adverse opinion regarding the petitioner and appeared comfortable in his presence. The respondent, despite directions from this Court to facilitate interim custody arrangements, refused, citing emotional reasons.

14. The petitioner, being the natural guardian, possesses a preferential right to custody unless disqualified by adverse circumstances, which are absent in the present case.

15. Upon consideration of the entire material, this Court finds no infirmity or illegality in the Trial Court's order and the Civil Miscellaneous Appeal is liable to be dismissed. However, considering the child's academic continuity and humanitarian considerations, the petitioner fairly conceded to allow the child to remain with the respondent until completion of the academic year. Accordingly, the respondent is permitted to retain custody of the minor child till the completion of the current academic year. Thereafter, custody shall be handed over to the petitioner. In the interim, the petitioner shall be entitled to visitation rights and may take the child during holidays.



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16. In the result, the Civil Miscellaneous Appeal is dismissed. The fair and decretal order dated 06.04.2022 passed in G.W.O.P.No.343 of 2019 on the file of the Family Court, Kanniyakumari District at Nagercoil are hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.K.I., J.) & (R.P., J.)
23.01.2026

Index : Yes / No

NCC : Yes / No

RM

To

1.The Judge,
Family Court,
Kanniyakumari at Nagercoil

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.K.ILANTHIRAIYAN , J.
AND
R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.571 of 2022

23.01.2026