

IN THE COURT OF PRINCIPAL JUDGE, FAMILY COURT,  
NAWADA (BIHAR)

**Guardianship Case no. 03/2025**  
**(Under section 7 of Guardian and Wards Act.)**

**Presiding Officer:- Girdhari Upadhyay,**  
**Principal Judge,**  
**Family Court, Nawada**

**DATE OF ORDER :- 08.05.2026.**

Gaukaran Singh S/o Nawal Singh, aged about 55 years,  
R/o Village- Paura, P.S- Kadirganj, District- Nawada.

..... Applicant/Petitioner

**Versus**

Maruti Kumari W/o Late Akshay Kumar D/o Lalan Singh,  
R/o Village- Janpura, P.S- Nardiganj, District- Nawada.

.....Opposite Party.

Counsel on behalf of the Applicant- Sri Sudhanshu Kumar, Advocate  
Counsel on behalf of the opposite party :- Non.

**ORDER**  
**Dated: 08.05.2026**

1. The present suit has been filed by the applicant/petitioner Gaukaran Singh under section 7 of the Guardianship and Wards Act against the opposite party Maruti Kumari for declaring him as guardian of his minor grand sonS, namely, Ansh Kumar and Suryansh Kumar.

**THE CASE OF THE APPLICANT:-**

2. The brief facts of the case of the applicant is that the marriage of his son namely Akshay Kumar and Maruti Kumari was solemnized and out of their bedlock two sons born namely Ansh Kumar born on 14.04.2019 and another son namely Suryansh Kumar was born on 25.09.2022. It is further stated that the opposite party was always misbehaving her husband Akshay Kumar and her parents and she always assaulting said Akshay Kumar and due

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to misbehaviour of opposite party with Akshay Kumar and his parents, he was always living in mental tention not even that she always left the matrimonial house without any consent of Akshay Kumar and his parents, this act was against prestige of Akshay Kumar and his parents and when left her matrimonial house her two sons are residing with their grand mother, namely, Kiran Kumari and grand father namely Gaukaran Singh applicant and his daughter Priyanka Kumari. Actually, the opposite party never carrying her two sons and since childhood of said Ansh Kumar and Suryansh Kumar are residing with grand father and grand mother and they are still residing with their grand father and grand mother and applicant has been acting as guardian of said Ansh Kumar and Suryansh Kumar since begining as their father Akshay Kumar was in mental tention and fell ill and ultimately he died on 05.08.2024 at native village Paura and after completion of Shradh i.e after thirteen days of death of Akshay Kumar said Maruti Kumari permanently shifted with her ornaments at her Naihar Village- Janpura. It is further stated that the applicant made several attempt to bring her at village- Paura. It is to be noted here that daughter of the applicant namely Priyanka Kumari is residing at New Area, Nawada with her children, hence the applicant kept said Ansh Kumar and Suryansh Kumar with his daughter Priyanka Kumari with a view to education and welfare of said Ansh Kumar and Suryansh Kumar and the applicant always visiting at New Area, Nawada in gape of one and two days and looking after all affair of said Ansh Kumar and Suryansh Kumar not even that since life time of Akshay Kumar, Ansh Kumar and Suryansh Kumar are residing with their Phua Priyanka Kumari and they are saying said Priyanka Kumari Mummy and said Ansh Kumar and Suryansh Kumar are very happy and living in pleasant mood with their grand father and Phua. It is to be also noted here that the applicant and his son Akshay Kumar and Sarwan Kumar and members of joint family and the applicant is Karta of joint family, hence he is also defecto guardian of said Ansh Kumar and Suryansh Kumar. It is furhter stated that the opposite party had or has never taking care of Ansh Kumar and Suryansh Kumar and she has been ignorning said Ansh Kumar and Suryansh Kumar since their childhood. It is further stated that in view of welfare of said Ansh Kumar and Suryansh Kumar the applicant may be appointed as guardian of said Ansh Kumar and Suryansh Kumar and he is undertaking that he will do work

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in interest and welfare of said Ansh Kumar and Suryansh Kumar and he will never dispose of any share of said Ansh Kumar and Suryansh Kumar in joint family property. It is, therefore, prayed to appoint the applicant as guardian of Ansh Kumar and Suryansh Kumar.

3. The present case was filed on 01.03.2025 and thereafter ordinary notice and registered notice were issued on 18.01.2021. Again summons were issued on 02.04.2025 and thereafter on 19.07.2025 direction was given for publication which was published in the local news paper on 06.08.2025 but despite all the process/ service, the opposite party failed to appear and hence the matter was proceeded ex parte on 18.08.2025 after which ex parte evidence was recorded.

4. In the light of the application filed by the applicant/petitioner, the following points are for consideration before the court:-

(I) Whether the applicant is eligible to be declared guardian of their minor grand sons ?

(II) Whether the applicant is entitled to get the custody of their minor grand son, namely, Ansh Kumar and Suryansh Kumar.

#### **FINDINGS**

5. In order to substantiate his case, the applicant/petitioner has produced and examined three witness namely (P.W.1) Gaukaran Singh who is applicant/petitioner himself, (P.W.2) Kiran Kumari who is wife of the applicant/ petitioner and (P.W.3) Shrawan Singh who is son of the applicant/petitioner.

There is no any documentary evidence adduced on behalf of the petitioner.

6. From perusal of the evidence of A.W.1 Gaukaran Singh who is petitioner himself and grand father of his minor children namely, Ansh Kumar and Suryansh Kumar. He has stated in his evidence that his son Akshay Kumar was married at village Jainpura with opposite party namely Maruti Kumari and with their wedlock two sons, namely, Ansh Kumar born on 14.04.2019 and Suryansh Kumar born on 25.09.2022. Maruti Kumari used to commit Marpit with his son and she used to commit misbehaviour with them and due to which the opposite party Maruti Kumari, his son remain in mental tension. Maruti Kumari used to go at her parental home on her own by calling her brother due to which the prestige of the family diminished. Due to the mental tension his

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son Akshay Kumar died on 05.08.2024 and thereafter on 13th day of death of his son, the opposite party went at her Maika and she never return to her in-laws' house. He has further stated that his house is 11 K.M away from Nawada. His both grand sons Ansh and Suryansh has been looked after by him and both are living happily with him. His daughter used to live at Nawada and both his grand sons are living with her and pursuing their studies. Both Ansh and Suryansh are studying in Prerana English School at Nawada. Every day milk is brought for his grand sons and for their welfare and good education his appointment as guardian is necessary. As per his economical condition as far as possible he is maintaining both of grand sons and providing medical facilities and he is providing religious traditional education to them. He has dedicated whole time for their upbringing. He and his wife are well as far as possible they are looking after both the children as mother and father and imparting love and guidance to them. He has not accounted the expenses for maintenance of the children and he cannot state what was being expended in their maintenance.

The proceeding of the case is going on exparte. Therefore, non appeared for cross-examination of the witness but some of the questions has been asked by the court itself. In the answer of the questions put by the court, the witness has stated that Maruti Kumari is his daughter-in-law and Akshay Kumar is his son and in their wedlock his grand sons are born. His son Akshay Kumar was died untimely and after funeral rites on 13th day leaving both grand sons she left for her Maika and thereafter, she never returned and he has no any connection with her. She never came to meet the children and she also not contacted on phone. She has never shown any affection and provided any gift, toys and money to the children. She is negligent with his grand sons. He had gone at village Sasural of his son, where his daughter-in-law used to live, after four months of death of his son at village- Jainpura, P.S- Warisaliganj but without any reason there was possibility of Marpit there. Therefore, he return from there. He had tried to contact with the help of the relatives and co-villagers but his attempt was unsuccessful. From behavior of his daughter-in-law he understands that she is about to solemnize second marriage. Due to this reason even being mother she is ignorant with his grand sons. Otherwise, there is no any reason to ignore her sons. But being grand father of the children he

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cannot flee from his responsibility. He has further stated that he looks picture of his son in them. He is able to maintain them and he has no any expectation of help from any one. He has filed this case for legal formality, so that no any problem arise in future for looking after them. His family is well to do and he is maintaining them as his duty. He has further stated that case be admitted so that without any suspicion he may work for the welfare of the children.

7. A.W.2 Kiran Kumari is wife of the petitioner and mother-in-law of opposite party. She has stated in her evidence that her son Akshay Kumar got married with the opposite party Maruti Kumari at village- Jainpura. Two sons, namely, Ansh Kumar born on 14.04.2019 and Suryansh Kumar born on 25.09.2022. From perusal of the evidence of this witness, it appears that she has deposed same as A.W.1 has deposed and she has given evidence in the same line like A.W.1.

In court questions she has also answered in the same line as A.W.1 . From the evidence of A.W.2, the evidence of A.W.1 has been fully corroborated and supported.

8. A.W.3 Shrawan Singh. From evidence of A.W.3, it appears that his examination in chief on affidavit has been filed on 22.11.2025 and from his evidence, it appears that he has stated that he knows both the parties. The petitioner is his father and the opposite party Maruti Kumari is wife of his late brother Akshay Kumar. From perusal of the evidence of A.W.3, it appears that he has supported and corroborated the evidence of A.W.1 and A.W.2 and given his evidence in the same line as that of A.W.1 and A.W.2.

In court question, he has stated that relationship with his Bhabhi and brother was tense because she work on her own and she used to misbehave with his family. His brother died on 05.08.2024 thereafter she went at her Maika and she never returned. The maintenance of his nephew Ansh Kumar and Suryansh Kumar is being done by his father. In the protection of his father Ansh Kumar and Suryansh Kumar are proceeding as intelligent student. He has a big family and he used to live with his family. His house is by the side of house of his father. His mother is with his father and he has a sister who is married who used to come regularly at his house and she used to stay at her parents. The family of brother and of his father are in the village. His father has a good reputation in the village. From perusal of the court questions and

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answers given by the witness, it appears that he has properly answered all the questions and from his answer, it appears that the opposite party has neglected both the children and she never tried to meet them. The petitioner and his family members take care of both the children and they are living happily with them.

**9.** Explanation (g) of the Section 7 of Family Court Act, 1984 provides that the Family Court has jurisdiction to entertain a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

Section 7(1) (b) provides power of the Court to make order as to guardianship. Where the Court is satisfied that it is for the welfare of a minor that an order should be made (a)-----

(b) declaring a person to be such a guardian the Court may make an order accordingly.

From the provisions of Section (7) of the Guardians and Wards Act, 1890 and explanation (g ) of the Section 7 of Family Court Act, 1984 referred above, it is clear that the family court has jurisdiction to entertain the suit or proceeding in relation to the guardianship of the person or the custody of any minor.

**10.** In the present case the present petition has been filed by grand father for guardianship and custody of his two minor grand sons, namely, Ansh Kumar and Suryansh Kumar who are living with him after death of their father. Both the children are minor. Ansh Kumar is born on 14.04.2019 who is aged about 7 years and date of birth of Suryansh Kumar is on 25.09.2022 who is aged about 3 years and 7 months. From the averment in the petition of the petitioner, it appears that the father of both minor children died on 05.08.2024 and after death of their father, their mother opposite party, namely, Maruti Kumari permanently shifted with her ornaments at her *Maika* at village- Janpura, P.S- Nardiganj, District-Nawada. Thereafter, she never turned back to her matrimonial home and she never took care of these minor children, the minor children are being look after by their grand parents at their parental home. From the averment of the petition, it has also come that the minor children are pursuing their study in the case and protection of the petitioner. The family of the petitioner is supporting him in looking after these minor children. The children are studying in Prerana English School at Nawada and daily

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requirement of these minor children are being fulfilled by the petitioner. From the record, it also transpires that on 22.04.2026 both the children were produced before this court by the petitioner/ their grand father who were very happy with their grand father and they also talked with the court and the court felt that the children are comfortable with their grand father. They have no memory of their mother and they stated that they have not seen their mother.

**11.** From perusal of the evidence of A.W.1 Gaukaran Singh petitioner himself, it appears that he has fully supported his case as stated in the petition and he has further stated that the relation of opposite party and his son Akshay Kumar was not good and due to misbehaviour of the opposite party his son used to remain in tension. Ultimately, his son died untimely on 05.08.2024 and thereafter on 13th day of death of his son, the opposite party/ his daughter-in-law went at her Maika and she never returned. She has got no care for her children and she is about to solemnize second marriage. He has further supported his contention regarding care and protection of these minor children and he is maintaining these children and they are studying in Prerana English School at Nawada. He is taking care of the children. The evidence of A.W.2 has been fully supported and corroborated by evidence A.W.2 Kiran Singh, wife of the petitioner and A.W.1 Shravan Singh who is second son of the petitioner.

**12.** In the case of Mausami Moitra Ganguli versus Jayant Ganguli the Hon'ble Supreme Court has held at para 19 and 20 reported in (2008) 7 SCC 673d that the principles of law in relation to custody of a minor child are well settled. It is a trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Undoubtedly, the provision of law pertaining to the custody of a child contains in either the Guardian and Wards Act, 1890 (section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact no statute, on the subject, can ignore, eschew or obliterate the vital factor of the minor.

The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be

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decided on its own facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the sole determining factor for the custody of the child. It is here that a heavy duty is cast on the court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration.

**13.** Section 17 of the Guardians and Wards Act, 1890 provides as under;-  
Matters to be considered by the court in appointing guardian-

(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) The Court shall not appoint or declare any person to be a guardian against his will.

**14.** From consideration of the aforesaid facts and circumstances of the case, the evidence on record and the relevant law referred above, it is evident that the petitioner is grand father, next near relative of the minor children after their mother. The mother of the children have left the matrimonial home and these children and she is taking no care of the children after death of their father. The grand father/petitioner of these children are most appropriate person for being appointed as guardian for their person. Under the facts and circumstances of

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this case and evidence on record and also from the observation of this court to look after these children and for custody of these children, it will be in the welfare of the children that the petitioner be appointed guardian for their person and custody.

**15.** Under the aforesaid facts and circumstances, I am of the opinion that petitioner/applicant is eligible to be declared guardian of the person of his minor grand sons, namely, Ansh Kumar and Suryansh Kumar and he is entitled to get the custody of their minor grand sons.

**16.** In the result, the petitioner, namely, Gaukaran Singh is appointed as guardian for the person and custody of the minor children, namely, Ansh Kumar and Suryansh Kumar.

Accordingly, the petition of the petitioner is hereby **allowed**.

**Dictated, corrected and pronounced  
by me in open Court**

**Principal Judge, Family Court  
Nawada (Bihar)  
Date:- 08.05.2026.**

**(Girdhari Upadhyay)  
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