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	Decided on	19/06/2026
	Duration	3Y 5M 17D

IN THE COURT OF DISTRICT JUDGE-1, MUKHED, DIST. NANDED

(Presided over by S. P. Deshmukh)

Civil M. A. No.1/2023

Exh. 43.

1. Renuka W/o Suryakant Pawar,
Age : 30 years Occu : Household,
R/o Shivajinagar Tanda
Tq. Mukhed Dist. Nanded.
A/p. Forest Office Galli, Mukhed
Tq. Mukhed Dist. Nanded.

....Applicant

Versus

1. Tulshiram S/o Jemla Pawar,
Age : 60 years Occu : Agri
2. Vinayak S/o Tulshiram Pawar,
Age : 35 years Occu : Agri.
3. Dadarao S/o Tulshiram Pawar,
Age : 40 years Occu : Agri
All R/o. Shivajinagar Tanda,
Dapka (Gu.)
Tq. Mukhed Dist. Nanded.

**....Non
Applicants.**

Appeal :- Under Section 7 of the Guardians and Wards Act, 1890.

Appearance :

Shri. L. M. Somware, Ld. advocate for the Applicant.

Shri. G. T. Jadhav, Ld. advocate for the Non Applicants.

JUDGMENT**(Delivered on 19/06/2026)**

The Present application is filed under section 7 of Guardians And Wards Act, 1890 for determination of guardianship of two minor children of the applicant namely ASP (age 10 years) and RSP (age 8 years).

2] As per the case of applicant her husband namely Suryakant has died in the year 2020. The non applicant No.1 is her father in law and non applicant No.2 and 3 are her brother in laws. After death of husband, the minor children were residing with the applicant, however the non applicants have forcibly taken away both of them from her custody by making hands with police. Presently, both the minor are in the custody of non applicants. The applicant is natural guardian of both minor children and therefore, entitled to have their custody. Both the children are in need of love and care of the applicant. Their custody with the non applicants is neither safe nor proper. Therefore, it is prayed that considering illegal custody of the minors with the non applicants, their custody may be given to the applicant and she may be appointed as guardian of both the children.

3] The respondents No.1 to 3 has filed their reply below Exh.15 and categorically denied the allegations of illegal custody of the non applicant as well as threat to the safety of minors with the non applicant. It is contended that the applicant has performed second marriage with one Madhav Ramrao jadhav on 05.11.2022 and at that time, both the applicant and her second husband Madhav have written one bond paper on which they mentioned that after this marriage, the custody of both minor children of applicant shall remain with their grand parents and they would not have any right

over both the children. After second marriage with Madhav, the applicant is residing at Mukhed. As she has performed second marriage or residing with said Madhav as if husband and wife, considering character, she is not entitled for custody of the children. She would not take care of inculcating culture on the children or to take care their education. The said Madhav Jadhav has performed third marriage with applicant as his first wife Anita has already deserted him after filing criminal cases and second wife Shantabai has died in an accident. Under such circumstances, custody of minors with the applicant who is residing in the company of said Madhav Jadhav would not be in the welfare of children. It is also pointed out that the applicant has tried to get custody of the children by filing an application under section 97 of Cr.PC towards Judicial Magistrate First Class, Mukhed. However, said application is dismissed on 04.10.2021 as the minor children have personally expressed their desire to the learned Magistrate that they want to reside with their grand parents. Revision petition filed against said order in the Session Court is also dismissed on 18.11.2022. Thus, it is contended that the applicant is neither eligible nor entitled to obtain custody of her minor children. Hence, he prayed to dismiss the application.

4] Both the parties have lead their evidence by way of affidavit and their cross-examination is conducted by adverse party.

5] I have heard submissions of both sides. Considering the available material on record and considering submissions of rival parties, following points arise for my determination and I have recorded my findings against to for the reasons stated below.

<i>Sr. No.</i>	<i>POINTS</i>	<i>FINDINGS</i>
1.	Whether the applicant is entitled for changing over custody of both minors from the non applicants in her favor as their guardian ?	..No
2.	Whether the applicant is entitled to be appointed as guardian of both minors ?	..No
3.	Whether application is worth to be allowed ?	..No
4.	What order ?	As per final order.

REASONS

Points No.1 to 3 :

6] The applicant has filed her affidavit of evidence below Exh.18 and filed evidence closed pursis below Exh.22. In the same manner, the non applicant No.1 has also filed his affidavit of evidence below Exh.24 and filed evidence closed pursis below Exh.41. No documentary evidence is placed on record by either parties except the copy of judgment in Criminal Revision Petition No.16/2021 which is filed by non applicant side. It is not in dispute that the present applicant has made an attempt to get custody of both minor children by taking recourse of the provisions of Sec.97 of Cr.PC. However, considering the scope of said provision and considering the wish and desire of minor girl ASP, the learned Magistrate has dismissed the said application and order passed by the learned Magistrate is further confirmed in said criminal revision petition.

7] In the instant application, I have been called upon to decide the guardianship of two minor children i.e. ASP (presently of

14 years) and RSP (presently of 12 years), till they attain their age of majority. The applicant is natural guardian whereas non applicant No.1 is grand father of minors with whom they are residing since long. It is an admitted fact that the husband of the applicant has died on 05.11.2020 and since thereafter both the children are residing with their grand parents. A period of more than 5 years has now been lapsed.

8] It is worth to note that the efforts have been taken to settle the dispute between parties by way of mediation, but the parties have not co-operated and not remain present. Before concluding the matter, I have personally made interaction with both children in my chamber. I have discussed with them about their routine and their educational interest and progress as well as about their comfort in the family where they residing. The minor children have expressed their preference to reside with the non applicants i.e. grand parents. It is also observed that minor children are doing well in pursuit of their education and other activities while residing with grand parents. They are well settled and progressing fine. Both the children are found confident and well groomed. They are intelligent and reasonably grown up. They have personally expressed their clear desire to reside with grand parents.

9] In view of aforesaid interaction with minor children it appears that both the children have strong desire to continue to reside with the non applicants i.e. grand parents. The aforesaid desire although itself cannot be a determinative factor of custody of the children, but it must be given due consideration on account of it being a factor of utmost importance.

10] Besides the desire of children to reside with grand parents, it is duty of this Court to consider the question about welfare of the children. In the case of ***Col. Ramneesh Pal Singh Vs. Sugandhi Aggarwal ; 2024 INSC 397*** the Hon'ble Supreme Court observed as follows;

“8. It is well settled that the principal consideration of the Court whilst deciding an application for guardianship under the Act in exercise of its *parens patriae* jurisdiction would be the ‘welfare’ of the minor children.

9. The aforesaid principle is also enshrined in Section 17 of the Act, the same is reproduced as under:

“17. 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 the minor is old enough to form an intelligent preference, the Court may consider that preference.

** * * * **

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

10. In this context, it would be appropriate to refer to a decision of this Court in Nil Ratan Kundu(Supra) wherein parameters of ‘welfare’ and principles to be considered by courts whilst deciding questions involving the custody of minor children came to be enunciated. The relevant paragraph(s) are reproduced as under:

“52. In our judgment, the law relating to custody of a

child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well being of the child. In selecting a guardian, the court is exercising *parens patriae* jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

Xxx [Emphasis supplied]

11] The observations of the Hon'ble Supreme Court in the aforesaid case makes it clear that the Courts while exercising *parens patriae* jurisdiction must not limit itself to the wish and desire of the minor children but must ensure the welfare of the minor children. The minor children in the present case are at an impressionable age and require the presence of their grand parents.

12] The applicant in the present case has examined herself only and not filed any documentary evidence in support of her case. She is not aware as to whether her children are studying and what is their status. She is learning tailoring work with the said Madhav as per her admission in her cross-examination. However, she denied

that she has performed marriage with the said Madhav and that she has given one consent letter on a bond paper to the police. The non applicants have made all endeavors to examine the concern police employee Mr. Kagne before whom the applicant and her so called second husband Madhav have filed copies of consent deed saying that they have waived their rights regarding both minor children as they are performing marriage. However, the non applicants could not secure the presence of police witness in the present case. Albeit, the facts remains that both the children are taking education in Vidya Wardhini School of Dapka Gundopant Tq. Mukhed Dist. Nanded and they are continuously residing in the company of their grand parents. The applicant could not point out any fact which may tends to show that there is any threat or any insecurity to the custody of minors with non applicants. On the contrary, it appears that the applicant is either residing alone or with said Madhav Jadhav. She has not brought on record any material showing her source of income or her financial stability. There is nothing in the evidence of parties to show that minor children are not safe, comfortable and not settled in the long and continuous custody of their grand parents and they are not doing well in the said surrounding. Apart from insufficient evidence brought on record by the applicant, the personal interaction made with the minor children by this Court during hearing of this application makes me to conclude that it is in the welfare of the children that they shall be keep continued permanently in the custody of their grand parents or non applicants.

13] In order to conclude the discussion, it can be stated that there is nothing on record to suggest that their interest and welfare of the minor children was in any manner affected during their stay

with the non applicants. The express desire or wish of the minor children to stay with grand parents makes me to incline in favour of their desire. The relationship between applicant and non applicants appears to be spoiled. Under such circumstances, considering of circumstances and surroundings and considering the welfare and interest of the minor children, I do not found that applicant is either eligible or entitled to get custody of her children from non applicants and she is not entitled for appointment as guardian of the said minor children. However, the applicant being real mother of minor children, she can be permitted to make visit to her children in specified manner, though the applicant has not prayed for it. It would be convenient, beneficial and proper in the welfare of minor children that applicant mother shall meet them twice in month, preferably on second and fourth Sunday of each month at the village where children resides. They can meet on above said two Sunday in between 10.00 a.m. to 4.00 p.m. subject to any academic engagements of the said children. The non applicant shall co-operate for such meetings.

14] As a result thereof, the application is liable to be rejected. Hence, I have recorded my findings as to point No.1 to 3 in negative and pass the following order :

ORDER

1. The Civil Miscellaneous Application No.1/2023 is hereby rejected.
2. The applicant mother may meet the children twice in month, preferably on second and fourth Sunday of each month at the village where children resides. They can meet on above said two Sunday in between

10.00 a.m. to 4.00 p.m. subject to any academic engagements of the said children.

Date : 19/06/2026

Place : Mukhed

(S. P. Deshmukh)

District Judge-1 Mukhed.

CERTIFICATE

I affirm that the contents of this P.D.F. File judgment are same word to word, as per the original Judgment.

Name of the Stenographer	:	C. P. Yellewad Steno (Grade-III)
Court name	:	District Court-1, Mukhed.
Date of Dictation	:	18/06/2026, 19/06/2026
Date of Judgment	:	19/06/2026
Judgment signed by the Presiding Officer on	:	19/06/2026
Order/Judgment uploaded on	:	19/06/2026