

KAKB210004642023



**IN THE COURT OF SENIOR CIVIL JUDGE AT ALAND,
KALABURAGI DISTRICT.**

:PRESENT:

SRI. S.M. ARUTAGI

B.com. LLB., (Spl)

SENIOR CIVIL JUDGE, ALAND.

G & WC.No.18/2023

DATED THIS THE 26th DAY OF APRIL 2024

PETITIONER:

Jyoti W/o Bhimashankar Kumbar,
Age: 29 Years, Occ: Private Work,
R/o C/o Basavaraj Hadgil,
H.No.10-851, Kumbar Galli,
Venkawwa Market, Kalaburagi.

(By Sri. Jitendra Rao, Advocate)

// Vs. //

**RESPONDENTS:**

1. Bhimashankar S/o Hanmant Kumbar, Age: 38 Years, Occ: Lorry Driver, R/o Kodalhangarga village, Tq. Aland, Dist. Kalaburagi.
2. Smt. Nagamma W/o Hanmant Kumbar, Age: 58 Years, Occ: Household, R/o Kodalhangarga village, Tq. Aland, Dist. Kalaburagi.

(By Sri. S.A. Kathare, Advocate)

(S.M. ARUTAGI)
Senior Civil Judge,
Aland.

**ORDER ON APPLICATION FILED UNDER ORDER
12 OF GUARDIANS AND WARD ACT.**

This is an application filed by the petitioner U/Sec., 12 of Guardians & Wards Act, seeking interim custody of minor wards in her favour by



allowing the application in the interest of justice and equity.

2. In the affidavit, it is stated that she is the natural guardian and mother of the minor wards and the respondents are refusing to see and have access to the minor wards and she has utmost love and affection towards the minor wards. She is very much interested in the betterment and welfare of the minor wards. It is further averred that she is doing private service and she has capacity to maintain the minor wards as she is the natural mother of the minor wards. It is averred that the minor wards are of tender age and are likely to forget her and with due respect in the facts and circumstances of the case, if the temporary custody of the minor wards is not given to her, irreparable loss and injury will be caused to her, which cannot



be compensated in any manner. Hence, sought for allow the application.

3. On the other hand, the respondents filed detailed objection contending that the application is not maintainable in the eye of law. It is further contended that the minor wards Sakshi and Krutika are regularly attending students in school at Kodalhangarga village and hence, making alteration in residence of the wards will harm to the minor wards and the same is against the welfare of the wards and one Siddharth is well and fit and growing in the healthy environment with sisters love and affection and care of respondents.

4. It is further contended that the petitioner having no any permanent residence as to take care of minor wards and also to arrange them to attend the school. The respondent No.1 and 2 are being



natural father and grand mother of the minor wards, taking due care of wards and petitioner not even said a single word about why the custody of the respondents is unsafe for the children. It is contended that the changing habitation of studying minor wards is against the welfare of the minor wards and the petitioner never visited to the wards till today. Just to cause respondents intentionally multiple cases filed against them. On these grounds, prayed for dismissal of the application with costs.

5. Heard arguments on both side.

6. On the basis of application and objection, the following points arise for my consideration:-

POINTS

1. Whether petitioner has made out sufficient grounds to seek interim



custody of minor wards as per her application?

2.What order?

7. My findings to the above issues are as follows:-

Point No-1 :In the negative.

Point No-2.: As per order for the following:-

REASONS

8. **POINT NO.1:-** It is pertinent to note that the petitioner has filed this petition under section 7 and 10 of Guardian and Wards Act, against the respondent No.1 and 2 seeking custody and access of minor wards of Krutika, Sakshi and Siddarth in her favour and other reliefs.

9. When the matter is posted for objection to the main petition, the petitioner come up with the present application seeking interim custody of minor wards in her favour. In the petition, she has



averred that the marriage of herself and respondent No.1 was solemnized on 13-02-2012 at Yellamma Temple, Brahampur Road, Kalaburagi and out of their marital life, 03 children were born. It is also alleged that on several times, the panchayat were also held before the village elders at Kudalhangara and in the said panchayat, the respondent agreed to take back the petitioner and his children. When the petitioner has gone for delivery of third child to her parental house, the respondent No.1 did not turn up to take back the petitioner and her 03 children and therefore, the petitioner along-with her 03 children resided her parental house at Kalaburagi.

10. It is averred that thereafter, the counsel for the petitioner made a complaint before the Mahila Police Station, Kalaburagi during the year



2020-21 and the Mahila Police authorities called the respondent No.1, the the respondent No.1 came to the Police Station in a Jeep along-with 20-30 persons, at that time, the respondent No.1 admitted before the police that he will take back the petitioner along-with them to lead happy marital life and therefore, the petitioner and 03 children were came to the house of the respondent. Later on, the respondent No.1 left 02 female children with respondent No.2 and one son along-with the petitioner went to Pune for livelihood and in the said Pune, the petitioner started to earn Rs.8,000/- per month and 2-3 by working at houses and even, the respondent No.1 instructed to her to maintain the house by her earnings otherwise he given threat that he will sent back the petitioner to her parental house and even, the respondent No.1 used go give



ill-treatment and threatened the petitioner by coming daily at night by drinking alcohol and used to abuse and threatened the petitioner in filthy language and always used go give sexual harassment on every day and night to the petitioner. Moreover, the petitioner was not cooperated with respondent No.1, he bornd the both hands of the petitioner with knife. Furthermore, the respondent No.1 brutally beaten the petitioner and admitted in the Sasun Hospital at Pune at 1-00 am., on 16-04-2023 by telling the staff of the said hospital that the petitioner is a Anatha lady and the respondent No.1 intimated to the father of the petitioner that the petitioner was in hospital at Pune and he came to his village at Kodahangarga with son and threatened the father of the petitioner with dire consequences and told that the petitioner



is alone in the hospital and no one is there to look after her. Thereafter, the father and brother of the petitioner went to Pune and take back the petitioner at Kalaburagi and admitted in the government hospital and taken treatment for a period of more than 15 days. It is averred that later she filed a complaint before the Mahila Police, Kalaburagi against the respondent No.1 and 2, father-in-law, the petitioner and sister-in-law and even, the petitioner requested the police authority to give custody of her 03 children, but the police have advised the petitioner to approach the competent court of law for custody of minor wards. Therefore, she constrained to file the present petition.

11. The above contention taken by the petitioner has been totally denied by the respondent No.1 and 2 and the main contention of the



respondent is that since the date of marriage, the petitioner was not completely attached to the respondent No.1 and taken proper care of family and she frequently used to reside at Kalaburagi and she never taken care of the respondent No.1 and children. The respondents have conveyed the several panchayat and even, before the Mahial Police conciliated the matter, but the petitioner never care about the respondent No.1 and children and left the children, herself and used to reside in Kalaburagi. The petitioner advanced herself with fancy life style and she always found engaged on the phone calls rather than taking care of the children and respondents. The petitioner demanded the respondent No.1 to live separately apart from the parents in Kodahangarga for this the respondent No.1 rented the house at Pune and



started livelihood for some days. Later the petitioner without intimating to the respondents in Pune left the cohabitation in Pune. Though also the respondent No.1 keeping in mind of the future of the minor wards tolerated all whims and fancies of the petitioner. The respondent No.1 has made strong allegation against the petitioner is that she is having illicit relationship and always she use to talk on phone call with him and for which, the respondent No.1 caught several times and convinced to lead good life by taking care of the children, but she never cared the words of the respondent.

12. Moreover, it is contended that the respondent No.1 is well and fit to maintain the minor wards properly. The respondent No.2 grand mother of the minor wards taking due care of



minor wards and even, they have completely taking care of the children by all means and he admitted Krutika and Sakshi in the Higher Primary School at Kodalhangara village where they regularly attend the school and hence, the minor wards are under proper development. Under these circumstances, the question of changing the guardian not at all necessary. The petitioner is not having any love and affection towards the minor wards, never visited at-least to see face of the minor wards and filed this petition against the respondents. So, considering the plea taken by the respondents, one thing is undisputed fact that the petitioner and respondent are husband and wife and their marriage was solemnized on 13-02-2012 at Yellamam Temple of Kalaburagi and out of their marital life, 03 minor children were born.



13. It is further contended that as on the date of filing of the petition, the 03 minor children were residing in the house of respondent No.1 and 2 at Kodahangarga village. The petitioner in her affidavit, she stated that she was doing private work and she has capacity to maintain the minor wards. She was natural mother of minor wards. Though, the petitioner has stated in her affidavit that she was doing private service, but in order to give better education to the children, the petitioner has not shown her income source. No documents have been produced to show her occupation and even, she has not stated her nature of private service and how much she is taking salary and how much her income source. So, in the absence of all cogent and relevant documents, the petitioner is not entitled to interim custody of minor wards. Moreover, the



respondent No.1 is taken specific contention that since the date of birth of children, he nourishing them and he himself on saying of the petitioner admitted Kruthika and Sakshi to the school at Kalaburagi and all expenses were paid by him only.

14. On the other hand, the petitioner is strict to proof that why she is residing apart from him for long time while study was going on the school of children. So, looking to the contention taken by the respondent No.1 and non-production of of documents by the petitioner with regard to her private service, income source and nature of work, which is clearly goes to show that without production of cogent and relevant documents, the petitioner has filed this application and therefore, at this stage, she is not entitled for any interim



custody of minor wards from the custody of the respondent No.1 and 2.

15. It is further relevant to note that the petitioner has made a strong allegation against the petitioner stating that she was illicit relationship with some one and she always used to call on phone calls with him, so that fact also taken to be consideration while deciding and handing over custody of minor wards in favour of petitioner. So, if at all the custody of the minor wards is handed over to the petitioner, it will affect the future education of minor wards and even, as per the contention of the respondent No.1, the minor wards Kruthika and Sakshi are going Higher Primary School at Kodalhangara village regularly and if the guardian is changed, it will affect their education and



therefore, the petitioner is not entitled for interim custody of minor wards at this stage.

16. it is further relevant to note that the petitioner has not stated anything in the petition and application about she was residing with their parents, but in the petition as well as application, she stated that she was residing at rented house C/o Basavaraj Hadgil, H.No.10-851, Kumbar Galli, Venkawwa Market, Kalaburagi. So, looking to the cause title of the petition as well as application, it clearly goes to show that the petitioner was not residing with her parents as on the date of filing of the suit, but she was residing separately from their house as shown in the address of the cause title. It is one of the ground which affects the education of minor wards. Apart from it, remaining rival contention taken by the petitioner and respondents



will be considered only after full fledged enquiry. Until and unless completion of enquiry, this court cannot come to the conclusion who are better to take care of minor wards. In view of the above discussion and reason assigned by me, the petitioner has not made out any sufficient grounds to allow her application at this stage. Accordingly, I answer **point No.1 in negative.**

17. **POINT NO.2**:-In view of my answer to the point No.1, I proceed to pass the following:

ORDER

Interim application filed by the petitioner U/Sec., 12 of Guardian and Wards Act, is hereby rejected.

Considering the facts and circumstances of the case, no order as to costs.



For enquiry on main petition

(Dictated to stenographer directly on computer and typed by her, order corrected and signed by me then pronounced in the Open court on this the 26th day of April -2024)

(S.M. ARUTAGI)
SENIOR CIVIL JUDGE,
ALAND

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