

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, TIRUVALLUR
PRESENT: Tmt.J. JULIET PUSHPA, B.Sc., M.L.,
Principal District Judge, Tiruvallur

Thursday, the 27th day of February, 2025

I.A.1/2024 in GWOP.53/2024

P. Maniazhagan,

....Petitioner

Versus

1. A. Murugesan,
2. Devagi

.....Respondents

This Petition coming on for final hearing on 13.02.2025 in the presence of M/s S. Lakshmi Narayanan, learned counsel for the Petitioner and M/s C. Parkavi, M. Mohanapriya, learned counsel for the respondents, and upon hearing the arguments of both side and upon perusing the material case records and having stood over for consideration till this date, this Court delivered the following:-

ORDER

This Petition filed by the petitioner under Section 12 of Guardians and Wards Act, 1890 to grant interim custody of the petitioner's sons (1) minor. M. Kanish , aged 4 ½ years and (2) minor. M. Dishanth, aged 2 ½ years to the petitioner during the pendency of the Original petition for the welfare of minors' studies

2. The averments in the Petition filed by the Petitioner are as follows:-

The petitioner is the petitioner in the main Original Petition praying to grant custody of his minor sons M. Kanish and M. Dishanth born to the petitioner and respondents' daughter Sadhanapriya. The petitioner is an ITI Fitter and working in private company and earning sufficient to maintain his aged parents and his children. Since the petitioner's wife was working, the children were taken care of by the respondents and they created so many problems for taking care of the child even demanding money. While so, petitioner's wife committed suicide on 27.09.2023 at 8.30 AM and died in the hospital. Thereafter, the respondents came with rowdy elements and had taken away the children, even though based on his complaint and advise of RDO to hand over the children to the petitioner, for which the respondents demanded Rs.10 lakhs. First child M. Kanish is studying in LKG in Nazareth Matric Higher secondary school at Kannadapalayam, Avadi till 29.09.2023. After the custody of the child to the respondent, he was not allowed to go to school which he verified from the Principal of the school and they are not attending the school for 8 months. The respondents created scene that the petitioner is a bad person. Respondents also not taking care of the children's requirements. The respondents are acting to the tune of their another daughter and their son in law. The respondents are having psychological illness and the petitioner's children are being used as pawn and to blackmailing him emotionally. Being the natural

guardian and father, the petitioner is the fittest person for guardian of the minor children, and prays to grant interim custody of the children with the petitioner for their education.

3. The averments in the Counter filed by the respondents in brief is as follows:-

The respondent admits the marriage and birth of the minor wards. The respondents resist the petition denying all the averments in the petition. Their daughter Sadhanapriya was married to the petitioner on 09.03.2017 and two children were born on 22.06.2019 and 04.03.2021 respectively. After the marriage, the petitioner compelled respondent's daughter to take loan from SBI for Rs.4,50,000/- and Rs.3,00,000/- from HDFC and he had compelled to give dowry of 8 ½ sovereign gold jewels and other articles. Only with the money of the respondent's daughter, the petitioner used to buy everything and also he had harassed the petitioner's daughter and started even spying their daughter checking her mobile phone history, *whatsapp* message, and bank transactions. Even the petitioner's parents did not give proper food to their daughter. Even the petitioner's parents abused verbally their daughter and used to suspect her character. Their daughter told the respondent that she is tolerating all the harassment only for the sake of her children. Even when she met with an accident on coming two wheeler, she was admitted in hospital, but the petitioner or his parents did not care about her. All these put their daughter into mental agony and pressure and committed suicide on 27.09.2023 which was informed

by the petitioner and admitted in hospital. Even in the hospital till she was surviving she was more raged when the petitioner and his parents visited her and at last died. The death of their daughter only due to the ill-effects and abuse and neglect at the hands of the petitioner. The respondent filed police complaint about the death of their daughter for which FIR In Crime No.623/2023 u/s 174 Cr.P.C. was registered and investigation is pending. The children are now studying LKG and UKG in PMR Matriculation Higher Secondary School, Mogappair East, Chennai and they have been regularly sent to school. The children are comfortable with the respondent and the children are more attached with them and does not want to leave the respondents. Respondents have glimpse of their daughter only through her children and they are taking care of the children with utmost care. For the custody of the children, the court has to see only the welfare of the children as paramount consideration and not on mere legal aspects. Hence, prays to dismiss the petition.

4. No oral and documentary evidence on both sides.

5. **Now the point for consideration in this petition is**

Whether this petition to grant interim custody of the minor children M. Kanish and M. Dishanth to the petitioner as sought by the petitioner is ordered to be allowed or not ?

6. **POINT:**

Heard both side.

This petition is filed by the petitioner/father seeking interim custody of his minor children, M. Kanish and M. Dishanth till the disposal of original petition.

7. On perusal of records and points putforth by both counsel, it is seen that main original petition was filed by the petitioner against the respondents seeking custody of the his minor sons, M. Kanish and M. Dishanth and directing the respondents to hand over his minor sons for the purpose of future studies. The petitioner is none other than biological father of the above children and the respondents are their maternal grandparents.

8. The case of the petitioner is that the petitioner's wife Sadhanapriya already died on 27.09.2023 and the respondents have taken away the custody the children with them forcibly , thus he filed original petition seeking custody of the children. The respondents refused to permit the children to school and kept under their illegal custody. The respondents are not taking care of the children and the children are also not in good atmosphere. Hence, he filed this petition to give interim custody of the children, M. Kanish and M. Dishanth pending disposal of the main original petition.

9. Per contra, this petition is vehemently objected by the respondent on the ground that it was only the petitioner never cared the respondent's daughter and only due to the harassment made by him, she committed suicide and the children are under care of the respondents and they are very well

attending the school .

10. Admittedly, the minor children of the petitioner is now in the custody of the respondents/ maternal grandparents. The petitioner is none other than the biological father of the minor children, M. Kanish and M. Dishanth seeking interim custody. At this juncture, this Court wanted to assess the mental status of the children, M. Kanish and M. Dishanth and accordingly, interacted with the children in the chamber on 10.01.2025. The children was unable to recollect the facts about the petitioner as they are only 4 ½ years old and 2 ½ years old respectively. It was also observed from the words and expressions of the children that they are not willing to go with the petitioner and they are comfortable with the respondents. However, they have not expressed any ill-feelings towards their father and ready to meet him.

11. Admittedly, there is no adverse remarks upon the petitioner's conduct towards the children.

12. Even though the petitioner is a nature guardian and father of the children, the children are only 4 ½ and 2 ½ years old male children who are under the care and custody of the respondent, who is none other than the maternal grandparents. Moreover, the children have also not expressed willingness to go with the petitioner under his custody. Though the petitioner is the father and natural guardian of the children, in the matter of seeking custody of the minor children, the paramount consideration is only the welfare of the minor children as held by the Hon'ble Apex Court in **2019(7) SCC 42**

(Tejaswini Gaud and Others Vs. Shekhar Jagdish Prasad Tewari) that

“Welfare of the minor child is the paramount consideration:- The court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme consideration in cases concerning custody of the minor child. The paramount consideration for the court ought to be child interest and welfare of the child”

13. The petitioner seeks interim custody for the reason that the respondents deny the children from attending their school for the past 8 months. Per contra, the respondents state that the children are now studying LKG and UKG at PMR Matriculation Higher Secondary School, Mogappair East, Chennai. Admittedly, the children are now studying and regularly going to studies in the above said school, which was ascertained from the interaction of this Court had with the children. Though both side made allegations against each other towards taking care of the children, it appears from the interaction with the children that the minor children are comfortable under the custody of the respondents. Therefore, there is no ground made out to give interim custody of the minor children to the petitioner till the disposal of original petition. Under these circumstances, this Court is not inclined to grant interim custody of the children to the petitioner.

14. However, this Court has to consider the status of the petitioner towards the children, i.e. since the petitioner, being biological father is having naturally love and affection towards his children. Therefore, this Court has to realize and respect the relationship and the concern of the petitioner towards his own children i.e. sons. Merely because the children have not expressed any intention to go along with the father, as they have not seen the petitioner for long time, the same cannot be considered to deny the rights of the petitioner, who is none other than the father of the minor wards. Therefore, at this stage, the petitioner has every right to visit his children, which the respondents have to concede and understand since the petitioner is father of the minor wards. The interest of the minors will be best served if they remain with the respondents till the disposal of original petition, but with sufficient access to the petitioner so as to visit the minors at frequent intervals but so as not to disturb and disrupt their normal studies and other activities. Therefore, in view of the guidelines of the Hon'ble Apex Court reported in *AIR 2006 SC 1343 (Sheila B. Das vs P.R. Sugasree)* this court while dismissing the plea of the prayer of the petitioner in this petition, is inclined to grant only visitation rights to the petitioner with conditions. Accordingly, these points are answered. Hence, the point is answered accordingly.

In the result, this petition is dismissed. However, considering the facts and circumstances, the petitioner is granted with visitation rights to visit his minor children with conditions as follows :

1. The respondents are directed to produce minors M. Kanish and M. Dishanth to the petitioner at the Office of the District Legal Services Authority, Tiruvallur on the first Saturday of every month between 2.30 PM to 5.00 PM in the presence of Secretary, District Legal Services Authority, Tiruvallur.
2. The petitioner is given liberty to interact with minors M. Kanish and M. Dishanth at the above place and time.
3. The respondents, at the time of the interaction of petitioner with his children shall not give trouble to the petitioner and the minor wards.
4. Both the petitioner and respondents shall act with best interest of the minor wards.
5. The petitioner and the respondents shall ensure that during the visiting hours, the minor wards should not be subjected to any mental agony.

Dictated to the Steno-Typist, transcribed by him, corrected and pronounced by me in the Open Court, on this the 27th day of February, 2025

**PRINCIPAL DISTRICT JUDGE
TIRUVALLUR**

Petitioner side witnesses & Exhibits : NIL

**PRINCIPAL DISTRICT JUDGE
TIRUVALLUR**