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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.04.2026

PRONOUNCED ON : 28.04.2026

CORAM:

THE HON'BLE MR JUSTICE N.ANAND VENKATESH
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

C.M.A(MD)No.423 of 2026

S.Balaji ... Appellant

Vs.

M.A.Mahaboobani ... Respondent

PRAYER:- Civil Miscellaneous Appeal filed under section 47 of the Guardian and Wards Act to call for records and set aside the fair and executable order dated 29/09/2025 passed in the petition in G.W.O.P. No. 154 of 2025 on the file of the Family Court, Madurai and allow this Civil Miscellaneous Appeal and allow the petition appointing the appellant as the guardian of the minor child, H. Sabana Banu @ Shri Daanvika and pass such other further orders as may be deemed fit and proper in the circumstances of the case and thus render justice.

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For Appellant : Mr.J.Barathan

For Respondent : Mrs.M.A.Mahaboobani (party-in-person)

J U D G M E N T

(Judgment of the Court was delivered by N.ANAND VENKATESH, J.)

This appeal has been filed under Section 47 of the "Guardians and Wards Act, 1890" (for brevity hereinafter referred to as "the Act"), against the order passed by the Family Court, Madurai, in GWOP No. 154 of 2025, dismissing the petition filed by the appellant under Sections 4(2), 7, 8, 10 and 17 of the Act, for appointing the appellant as the legal guardian for the minor female child.

2. The case of the appellant is that she was married to one Gurulakshmi in the year 2012. They did not have a child and therefore they decided to adopt a child. The respondent was living nearby and was known to the appellant and his wife for more than 10 years.

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3. The respondent had three children and the third child was born on 14.12.2023. Since the respondent was working as a daily labourer and was struggling to provide the basic amenities to all the three children, came forward wholeheartedly to give her third female child on adoption to the appellant and his wife. Accordingly, the appellant and his wife started taking care of the child and the child was named as Shri Daanvika. The respondent also lost her husband and that made the situation even worse.

4. In view of the above, the appellant took steps to legalise the adoption and accordingly filed the guardian original petition before the Family Court to appoint the appellant as the legal guardian of the minor child till she attains majority.

5. The respondent supported the case of the appellant and made it very clear that she has no objection to appoint the appellant as guardian and that she is giving her consent wholeheartedly.

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6. The Family Court, Madurai, on considering the facts and circumstances of the case and after taking note of the fact that the appellant and his wife belong to Hindu religion and the minor child was born as a Muslim, came to a conclusion that even a non-Muslim can be appointed as a guardian, more particularly, when the child is not within the prohibited degree of relationship but, however, since the child was a female child and the appellant and his wife were considered to be strangers, the Family Court thought it fit to dismiss the petition by order dated 29.09.2025. Aggrieved by the same, the present appeal has been filed before this Court.

7. This appeal came up for hearing on 30.03.2026. This Court, after hearing the learned counsel for the appellant, was *prima facie* convinced that there is no legal bar for the appellant to be appointed as a guardian under the Act but, however, this Court wanted to ascertain the stand of the respondent. Therefore, the respondent was directed to be present before this Court.

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8. When the matter was taken up for hearing today, the appellant and his wife and the respondent and two of her children were present in the Court.

9. The respondent stated that she lost her husband and she was not in a position to provide even the basic amenities to all the three children and therefore, she took a conscious decision to give her third child on adoption to the appellant and his wife. She further stated that the child, right from birth, has been taken care of only by the appellant and his wife. Therefore, she wholeheartedly consented to appoint the appellant as the guardian. In fact, the child was calling the appellant as father (நைனா) and his wife as mother (அம்மா). The child was calling the natural mother as **"aunty"**. Therefore, the child was identifying only the appellant and his wife as the parents. We also enquired to other two children who were present along with the respondent and they stated that the minor child was always brought up by the appellant and his wife.

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10. In view of the above, we are completely satisfied that the appellant and his wife are genuinely bringing up the third child of the respondent as their own child and the child is also recognizing them as the parents. The respondent is also consenting for appointing the appellant as guardian wholeheartedly. Therefore, it will be in the welfare of the child to appoint the appellant as the legal guardian of the minor child.

11. Insofar as the legal position is concerned, Section 8(a) of the Act reads as follows:

> "8. ....
>
> (a) the person desirous of being, or claiming to be, the guardian of the minor, or"

It is clear from the above that any person desirous of claiming to be the guardian of a minor child can make an application for being appointed as a legal guardian.

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12. Section 17 of the Act provides for matters to be considered by the Court in appointing a guardian. The primary factor to be considered by the Court is the welfare of the child. Apart from that, the Court must also take into consideration the age, sex and religion of the minor and the character and the capacity of the proposed guardian. The scope of sub-section (1) of Section 17 of the Act is that the Court has to strike a balance between the attachment and sentiments of the parties towards the minor child and the welfare of the minor child, which is of paramount importance.

13. In the case of ***Shabnam Hashmi v. Union of India and Others***, reported in ***(2014) 4 SCC 1***, the Apex Court dealt with adoption *qua* Muslim law. The Apex Court laid down guidelines to enable the adoption of children by persons irrespective of religion, caste, creed, etc. In the said process, the Apex Court took into consideration the Muslim law and the views expressed by the All India Muslim Personal Law Board. Even though Islamic law does not recognise an adopted child to be on par with the biological child, it professes what is called as “Kafala”

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system where the child is placed under a Kafil who provides for the well-being of the child, including the financial support and thus is legally allowed to take care of the child. Though the child remains the true descendant of his or her biological parents and not that of the adopting parents.

14. The judgment of the Bombay High Court in the matter of ***the appointment of guardian of person of a female minor Doreen Theresa D'Souza in Manual Theodore D'Souza***, reported in ***1999 SCC OnLine Bom 690***, also lends some support. It was held that in the absence of any legislation setting out who can adopt person or persons, who has/her taken a child in guardianship, the concerned person can file a petition under the Act and adopt the child and can be appointed as a guardian.

15. In the considered view of this Court, the right of the appellant to be appointed as a legal guardian is recognized by the Act. While implementing the provisions of the Act, this Court is exercising its

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parens patriae jurisdiction in the best welfare of the child. The Guardians and Wards Act 1890, is religion-neutral and it will apply to every person desirous of being appointed as a guardian of a minor and religion becomes one of the consideration when the Court deals with the petition in line with Section 17 of the Act.

16. In the light of the above discussion, it will be in the welfare of the child to appoint the appellant as the legal guardian, since the child recognises the appellant and his wife as the parents and the child has been taken care by the appellant and his wife right from the birth. Therefore, this Court is satisfied with the credentials of the appellant and his wife and this Court is also satisfied that the consent has been given by the respondent wholeheartedly.

17. In the result, the appellant is appointed as the legal guardian of the minor female child H.Sabana Banu @ Shri Daanvika and accordingly, the order passed by the Family Court, Madurai, in GWOP

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No.154 of 2025 dated 29.09.2025, is set aside and this Civil Miscellaneous Appeal stands allowed. No costs.

[N.A.V., J.] **[K.K.R.K., J.]**
28.04.2026

NCC :Yes/No
Index :Yes/No
PKN

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To

1.The Family Court, Madurai.

2.The Record Keeper (Vernacular Records),
Madurai Bench of Madras High Court,
Madurai.

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N. ANAND VENKATESH,J.
AND
K.K.RAMAKRISHNAN,J.

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