



CNR: KAHC010714702025

NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO.8148 OF 2025(GW)

BETWEEN:

1. SHABAZ KHAN,
S/O FAIROZ KHAN,
AGED ABOUT 38 YEARS,
R/AT 2ND CROSS,
ADARSH NAGAR,
HASSAN - 573 201.
R/AT NO. 1109,
TUDA LAYOUT

2. ZAREEN TAJ,
W/O FAIROZ KHAN,
AGED ABOUT 63 YEARS,
R/AT 2ND CROSS,
ADARSH NAGAR,
HASSAN - 573 201.

NOW PETITIONER NO.1 & 2
ARE R/AT NO. 1109,
TUDA LAYOUT, 4TH CROSS,
RAJIV GANDHI NAGAR
TUMAKURU CITY - 572 102.

3. FAUZIA KHANUM,
W/O AFSAR ALI,
AGED ABOUT 39 YEARS,
R/AT NO. 779,
17TH 'B' MAIN ROAD,





NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025

CNR: KAHC010714702025

5TH BLOCK, RAJAJINAGAR,
BANGALORE - 560 010.

4. NAIZA KHANUM,
D/O FAIROZ KHAN,
AGED ABOUT 37 YEARS,
R/AT NO. 1109,
TUDA LAYOUT, 4TH CROSS,
RAJIV GANDHI NAGAR,
TUMKURU CITY - 572 102.

...APPELLANTS

(BY SRI. MANJUNATH B R., ADVOCATE)

AND:

1. NASEEMA BANU,
W/O MUNEER HUSSAIN,
AGED ABOUT 61 YEARS,
2. A.M. MUNEER HUSSAIN,
S/O LATE ZAHEER AHMED,
AGED ABOUT 66 YEARS,
COFFEE PLANTER,

BOTH ARE R/AT
VATEHALLI VILLAGE,
AREHALLI HOBLE
SAKALESH PURA TALUK
HASSAN DT -573101

...RESPONDENTS

(BY SRI. SAIRA K. ZUBAIR, ADVOCATE FOR
SRI. ABDUL ANSAR P., ADVOCATE FOR R1 & R2)

THIS MFA IS FILED UNDER SECTION 47 OF THE
GUARDIANS AND WARDS ACT, AGAINST THE JUDGMENT AND
DECREE DATED:09.10.2025 PASSED IN G AND WC NO.13/2023
ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT,
HASSAN, PARTLY ALLOWING THE PETITION FILED U/S. 10, 17,
19 AND 25 OF THE GUARDIAN AND WARDS ACT AND ETC.,



CNR: KAHC010714702025

NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This appeal under Section 47 of Guardians and Wards Act, 1890¹, filed by the father and his relatives seeking custody of minor children by name Kumari. Amairan Fathima and Kumari. Harmain Fathima (daughters of petitioner No.1), assailing judgment and order dated 09.10.2025 in G & WC No.13/2023 passed by the Principal Judge, Family Court, Hassan² wherein the Family Court declined permanent custody, however granted visitation rights.

2. The parties are referred to as per their ranking before the Family Court.

¹ 'G & WC Act', for short

² 'the Family Court', for short



CNR: KAHC010714702025

**NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025**

3. Facts germane to file the present appeal are as under:

AS PER THE PETITIONERS:

3.1 Petitioner No.1 is the father and petitioner No.2 is his mother and Petitioners 3 and 4 are sisters of petitioner No.1.

3.2 Petitioner No.1 married the daughter of respondents 1 and 2, by name Numrah Seeneen (mother of the minor Wards) on 05.10.2015 at HBS Hall in Hassan City as per Muslim law and customs. Numrah Seeneen is the only daughter to the respondents. After the marriage, Numrah Seeneen joined the matrimonial home of petitioner No.1. Since he was working in Riyadh as Salesman in a company, he had taken the wife to Riyadh after marriage. They came to India for the delivery of first daughter in the year 2017. On 12.10.2017, Numrah Seeneen gave birth to first daughter Kumari. Amairan Fathima.



CNR: KAHC010714702025

- 3.3 In the month of December 2017, petitioner No.1, Numrah Seeneen with their first child went to Saudi along with respondents. Petitioner No.1 had taken care of entire expenses of the respondents from India to Riyadh. The respondents spent about six months in Riyadh and then returned to India.
- 3.4 In the month of April 2019, Numrah Seeneen became pregnant for the second time and again, she was brought to Hassan by petitioner No.1. On 14.10.2019, second child Kumari. Harmain Fathima was born.
- 3.5 There was no instance of marital discord between petitioner No.1 and Numrah Seeneen. After the birth of second child, petitioner No.1, Numrah Seeneen, both the children along with the respondents, went to Riyadh and petitioner No.1 had taken care of all the expenses, as he did in the first time when the first child was born.



CNR: KAHC010714702025

- 3.6 On 18.10.2021, Numrah Seeneen came to India and on 10.12.2021, petitioner No.1 thereafter came to India from Saudi on 19.01.2022 to attend some family function in their family.
- 3.7 On 22.01.2022, petitioner No.1 had to undergo some operation immediately, which was fixed on 22.01.2022 in a Clinic at Bengaluru and he was admitted in the said hospital. When Numrah Seeneen wanted to visit the hospital along with the children, due to Covid-19 pandemic, she was not allowed by petitioner No1. and his family members. This was the reason for Numrah Seeneen to have some articulation with petitioner No.1 and his family members and in an hasty decision, she hanged herself in the bathroom in the house of petitioner No.2. Though the petitioners and neighbors broke open the door of the bathroom and took her to hospital, but she did not survive.



CNR: KAHC010714702025

3.8 The respondents after receiving the information, came down to Bengaluru from Hassan and at the instigation of some disgruntled members of the family, lodged a complaint on the following day with the Rajajinagar Police Station, Bengaluru making accusation of dowry demands and abatement to suicide. The police having registered the complaint, issued FIR for the offences punishable under Section 304B R/w Section 34 of IPC against the petitioners. The children who were with the family of the petitioners were forcibly taken by the son of the respondents by name Nazir Hussain with the assistance of the Police and thereafter, did not return the children. Petitioner No.1, who was arrested in relation with the afore accusation, released on bail by the order of this Court after eight months. The Police having completed the investigation, filed charge sheet against the petitioners and the matter was



CNR: KAHC010714702025

committed to the Sessions Court for trial in S.C No.1295/2022.

3.9 During the pendency of the Criminal Case, petitioner No.1 made several attempts to meet the children. But, the respondents reluctantly refused to permit petitioner No.1 to meet the children and threatened him that they would apply for cancellation of bail, if he tried to contact them. Petitioner No.1 given several petitions to the Police of Arehalli and Sakaleshpura Rural Police Station, however they did not interfere stating that, it is a civil dispute.

3.10 A notice was issued thereafter on 14.11.2022 to the respondents, to which the respondents gave evasive reply on 23.11.2022, making all sorts of false allegations. In the reply, the respondents have stated that the children are being looked after by Nazir Hussain - their son and they are the guardians of the minors and if the petitioners interfere with their



CNR: KAHC010714702025

custody, suitable action would be taken against them.

3.11 It is the further contention of the petitioners that, Nazir Hussain who was unmarried at that time, was not a suitable person under Islamic law to look after female children as guardian in the presence of father. It was further urged before the Family Court, that respondent No.1 is a heart patient and a chronic diabetic and respondent No.2 is also suffering from age old ailments. They are not educated to comprehend the curriculum of the children. Accordingly, they sought the custody of the children by filing the petition before the Family Court.

3.12 In response to the notice, the respondents appeared through their advocate and filed their statement of objections, taking main contention that, the petitioners treated Numrah Seeneen - their daughter (mother of minors) with all forms of cruelty by giving



CNR: KAHC010714702025

both mental and physical harassment and the petitioners are responsible for death of their daughter Numrah Seeneen. However, they have not denied the marriage, birth of children, their visit to Saudi along with Numrah Seeneen, minor children and petitioner No.1, however they have taken a specific contention that expenses for travel was borne by them. They have made a specific assertion that the petitioners by creating false clinical documents, ended the life of their only daughter Numrah Seeneen, as they have not fulfilled the demand of money sought by the petitioners and the death of Numrah Seeneen was falsely shown as suicide. It was contended that they have given enough dowry in the marriage and subsequently also, for the purpose of purchase of house in Tumkuru by petitioner No.1. They further asserted that their son's marriage has been fixed at the time of filing of the objections and respondent No.1 matrimonial grandmother is there to take care



CNR: KAHC010714702025

of the minor girl children. With this, they sought to dismiss the petition.

3.13 The Family Court, after completion of pleadings, framed the following points for consideration:

- "1) *Whether the petitioner No.1 needs to be declared as the guardian of the person of the minor children?*
- 2) *Whether the Petitioners are entitled to the custody of the children?*
- 3) *What order?"*

3.14 To prove their case, on behalf of the petitioners, petitioner No.1 examined himself as PW.1 and produced 49 documents and marked them as Ex.P1 to P49. On behalf of the respondents, respondent No.2 examined himself as RW.1 and produced 74 documents and marked them as Ex.R1 to R74.

4. The Family Court after considering the evidence both oral and documentary and having heard the arguments, has formed an opinion that on consideration of entire facts and circumstances and the inputs received



CNR: KAHC010714702025

from the children during the interaction, both the petitioners and respondents have interest and desire in the welfare of the minor children, however, father has an edge over all other contenders and he being the father is entitled for custody. However, the Family Court was of the opinion that the custody should be in a phased manner, leading from the present visitation rights to full custody. The sudden overnight transmission or change of custody would not be in the interest of children. Taking into consideration of the order passed by the Writ Court in W.P.No.25731/2024 and subsequent orders passed regarding the place of the visitation and the monetary order passed on I.A.No.8, the Family Court held that, the visitation rights provided under the said orders should be permitted to continue till the end of the school academic year 2025-2026 and after observing the developments, the children should again be interacted by the Court and then further extension of custody rights of the petitioner No.1 should be considered and further for this purpose the



CNR: KAHC010714702025

NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025

petitioner No.1 given liberty to file separate application under the Guardians and Wards Act, 1890 and passed the following order:

"The petition filed by the Petitioners under Section 10, 17, 19 and 25 of the Guardian and Wards Act read with the provisions of the Mohammedan Law, is partly allowed as follows:

The Petitioner No.1 (i.e., the father of the minor children) is hereby declared as the Guardian of the person of the minor children 1) AMAIRAH FATHIMA (Date of Birth 12.10.2017), 2) HARMAIN FATHIMA (Date of Birth 14.10.2019).

The Petitioners No.1 to 4 are permitted to meet the children every Saturday, after school hours till 5 pm and on Sundays from 10 am to 5 pm at Arehalli Police Station premises or any other place, convenient to both the parties and the children, in the presence of either of the Respondents, till the end of the school academic year 2025-26.

The Petitioner No.1 shall continue to pay the monetary assistance as ordered in IA No.8, till then.

After the completion of the final exams of the children of the Academic year 2025-26, the Petitioners shall file a formal application on the basis of this order for extending the frequency of visitation and/or sharing custody of the



CNR: KAHC010714702025

minor children, depending on the circumstances. On receiving such petition the office shall register it under new G&W case number and put up."

5. This order passed by the Family Court is called in question by the petitioners i.e., the father and his relatives in this present appeal.

6. Heard Sri.Manjunath.B.R, learned counsel for appellant and Ms.Saira K.Zubair, learned counsel appearing for respondent Nos.1 and 2.

7. Both the learned counsels reiterated the submissions which they have taken before the Family Court.

8. Sri.Manjunath.B.R, submits that the petitioner No.1/father being the natural guardian, in Islamic law, he is entitled for the custody of the children. The respondents are not educated and they are not in a position to attend the curriculum of the children. The children are admittedly going to a school which is situated at 3 kilometres away



CNR: KAHC010714702025

from the residence and attending the tuition classes, which is admittedly more than 20 kilometers. In that view of the matter every day the children are made to run around 30 kilometers. The atmosphere/environment of the area is not conducive to the health of the children as they are frequently falling ill due to the high cold and rainy atmosphere, since the area is a hilly area which is even admitted by the respondent No.2 in his evidence.

8.1 He further refers to the admissions of RW-2 that the father is in a better position to get the children to better school and take care. However, it is only on the count that they lost their daughter, they are depriving the petitioner from taking the custody of the children. That is not in the paramount interest of the children.

8.2 He further submits that even though the Family Court has observed that the father is entitled for custody, but denied the custody on the premise that



CNR: KAHC010714702025

it should be in a phased manner. He further submits that the respondents never adhered to the orders passed by the Family Court or this Court in the writ petition which made him to file Contempt petition against the respondents, wherein they failed to appear and even bailable warrants were issued against them.

8.3 Further, he has submitted that the son of respondents has been booked under the provisions of Immoral Traffic Prevention Act, 1956 in Crime No.570/2024 of Kengeri Police, Bengaluru City and he has obtained anticipatory bail and absconding and fled to Saudi evading criminal trial. The daughter-in-law of the respondents is not residing with them. The Family Court though appraised of these aspects failed to appreciate these aspects of the matter. In that view of the matter the appeal be allowed and the custody of the children be given to the father for better interest of the children.



CNR: KAHC010714702025

9. Per contra, Ms.Saira K.Zubair, with all vehemence submits that the petitioners are responsible for the death of the mother of the children. They have treated her with cruelty, which has ended in the death of their only daughter. The petitioner No.1 is not having any real love and affection towards the children, but only with retaliative motive filed this petition only to cause harassment. Children are very comfortable with the respondents and they are not ready to go with the petitioner No.1 or other petitioners. In that view of the matter, the better interest of the children are with the respondents and that has been properly considered by the Family Court and the order passed by the Family Court does not call for any interference and sought to dismiss the appeal.

10. Having considered the rival submissions we have perused the entire appeal as well as the documents appended thereto particularly the order of acquittal in



CNR: KAHC010714702025

SC.No.1295/2022 and the photographs produced along with statement of objections.

11. Before advertng to the claim of the respective parties, the Court must record certain facts which had taken place between the parties during the pendency of the petition:

- i) The Petitioner No.1 filed an application I.A.No.1/2023 seeking interim visitation rights. The said application came to be disposed of on 13.10.2023 granting interim visitation rights once in a month for one hour preferably on any Saturday afternoon before the ADR Centre, Hassan, in the presence of either of the respondents.
- ii) Thereafter petitioner No.1 filed I.A.No.7, seeking more visitation time to meet the children during the vacation. The said application was disposed on 27.04.2024, permitting the petitioner No.1 to meet the children every Saturday for one hour at the same



CNR: KAHC010714702025

place as ordered in I.A.No.1/2023, in the presence either of the respondents till the completion of the Summer Vacation.

- iii) The respondents have filed I.A.No.8, seeking monetary relief for the children, which came to be partly allowed, directing the petitioner No.1 to pay a sum of Rs.5,000/- towards the maintenance of minor children, from the date of filing of the said application till the disposal of the case.
- iv) On 04.05.2024, the petitioner No.1 had filed a complaint before the Hassan City Police Station against the respondents for non compliance of the order passed by the Family Court as per Ex.P42.
- v) On 20.05.2024, petitioner No.1 lodged a complaint before the police against respondent No.1, her son Nasir Hussain and another person named Mohammed Nasir stating that they have assaulted him. The



CNR: KAHC010714702025

NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025

endorsement issued on the said complaint was produced and marked as Ex.P41.

- vi) The criminal case in S.C.No.1295/2022 ended in acquittal stating that no evidence has been placed by the prosecution to establish the charge. As such the prosecution has failed to establish the charge against accused No.1 to 4 beyond reasonable doubt and acquitted them. The State has not preferred any appeal against the said judgment of the Sessions Court stating that it is not a fit case to file appeal.
- vii) It is also on record that petitioners filed W.P.No.25731/2024 against the order passed on I.A.No.7 and 8. The Writ Court on 27.04.2023, while disposing of the writ petition, opined as follows:

"8. It is not in dispute that the petitioner filed I.A.No.1/2023 seeking the visitation rights and interim custody in respect of 2 minor children once in a week from Saturday afternoon till Sunday night. The said application was allowed by the family Court vide order dated 13.10.2023. The petitioner was



CNR: KAHC010714702025

entitle for visitation rights once in a month for one hour preferably on any Saturday afternoon before ADR centre, Hassan, in the presence of either of the respondents. It is also not in dispute that a criminal case was registered against the petitioner and his family members, and they are acquitted in S.C.No.1295/2022. After the disposal of the criminal case, petitioner No.1 filed I.A.No.7 seeking for interim custody once in a week from Saturday afternoon till Sunday night and for the full period of vacation during summer, Dasara and Christmas vacation, in view of the changed circumstances. The said application was opposed by the respondents by filing objections contending that 2 minor children are in the safe custody of the respondents and they are taking care of the minor children. Father cannot be a guest in the life of 2 minor children. If visitation rights are only granted for limited hours, it may not be sufficient for the children to have a comfortable time with the father. With the wider gap, bonds were broken quicker and the children are left confused and end up believing this. Such acts of grand parents in separating the children from the father should be nipped in the bud; otherwise separated. Father became a guest in the life the minor children, mere meeting and spending time for the parents in a couple of hours in the court premises etc. Under the supervision of other relatives will not survive any purpose of visitation as the children would be under the pressure and will not be comfortable. The



CNR: KAHC010714702025

grandparents i.e., respondents and minor children and petitioner were present and I interacted with them, when a specific question was put to the minor children, whether they are willing to go with the father? It was found that they are under pressure of the respondents. Petitioner No.1 being a father is entitle for interim custody in regard to the visitation rights. Further, the Family Court placing reliance on the judgment of this court in the case of Smt. Jyothi Priya Vs. Paul Goodwin reported in ILR 2021 KAR 4894 was of the opinion that petitioner No.1 was examined and before the completion of enquiry, modification of the earlier order is not necessary. The Family Court has passed the order on I.A.No.1/2023 on 13.10.2023, wherein the petitioner and his family members were acquitted in S.C.No.1295/2022 i.e., subsequent to the passing of the order on I.A.No.1/2023 as there is changed in the circumstances. In view of the acquittal of the petitioners in S.C.No.1295/2022, the Family Court could have modified the order. On the contrary allowed I.A.No.7 in part and permitted petitioner No.1 to meet the children on every Saturday for one hour at the same place as ordered on I.A.No.1/2023 in the presence of either of the respondents till the completion of the summer vacation. The time granted by the Family Court is very less, as petitioner No.1 being a father is entitle to meet his minor children."



CNR: KAHC010714702025

- viii) In the aforesaid order, the petitioner No.1 has been permitted to meet the children every Saturday and Sunday, from 10.00 a.m. to 05.00 p.m., at the same place as per the order on I.A.No.1/2023, in the presence of either of the respondents, till the disposal of the petition. Further, the Writ Court has specifically observed that the Court when interacted with the minor children in the presence of the respondents and the petitioner No.1 and when the Court put a question to the minor children whether they are willing to go with the father? it was found that they are 'under pressure of the respondents'.
- ix) It is further forthcoming from the order impugned that on 18.11.2024, the petitioner No.1 gave a complaint to the Hassan City Police station against the respondents for not complying the order passed by the Writ Court in W.P.No.25731/2024 (Ex.P40). A contempt petition was also filed before this Court in CCC.No.1298/2024 (Civil) against respondents for



CNR: KAHC010714702025

disobeying the order passed by this Court (Ex.P47 and Ex.P48). The respondents have not appeared and warrant came to be issued in the contempt petition against them to secure their presence.

- x) It is also on record that a criminal case came to be filed in Crime No.570/2024 in Kengeri Police, Bengaluru City, against the son of respondents by name Nasir Hussain for the offence punishable under Sections 3, 4 and 5 of Immoral Traffic Prevention Act, 1956. The son of respondent by name Nazir Hussain is now in Saudi Arabia evading the criminal proceedings, as per the contentions of the petitioners/appellants herein.

12. We having considered the rival submissions perused the entire appeal papers. We have noticed that the respondents are coming in the way of petitioner No.1 to exercise his visitation rights granted by this Court.



CNR: KAHC010714702025

**NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025**

13. The Family Court categorically has stated that on interaction which was held in the chamber on 12.08.2025, the children were ready to talk only in the presence of respondent No.2 and declined to come to the chamber or to conciliation hall without the presence of respondent No.2. The Court held interaction in the conciliation hall in the presence of respondent No.2, asking respondent No.2 to sit at a distance. Initially the children were reluctant to interact, but after sometime they opened up to talk, especially the first child and started interacting freely and boldly. The child appeared to be smart and was interacting freely. When the Court showed photo of her father i.e., petitioner No.1 to the child, 'the child frowned and stated that she does not know him'. Even the second child did the same thing. 'When the petitioners were called inside the hall, the children refused even to look at them'. When the Court asked the children whether they were ready to go along with petitioner No.1 to Gulf, they



CNR: KAHC010714702025

answered in the negative, but they told that they were ready to go with Nazir Hussain, son of the respondents.

14. The Family Court, after considering and appreciating the evidence both oral and documentary, was of the opinion that the allegations of cruelty by the respondents inflicted on their daughter by the petitioners which had led to ending her life has not been proved in view of the acquittal order by the Sessions Court. The respondents have failed to prove that the petitioners have inflicted any cruelty on the minor children. Further, it was observed that the minor children were in the custody of the respondents since last 3 years subsequent to death of their mother, therefore, naturally the children have much attachment towards the respondents and their son, who was in the same house. 'The said attachment cannot be taken undue advantage by the respondents and deny the legal custody of the children to the father, taking the same as the ground'.



CNR: KAHC010714702025

15. The Family Court further observed that petitioner No.1 is educated and he is financial sound and he owns a house. The Family Court unequivocally has held that upon consideration of the entire facts and circumstances and the inputs received from children during the interaction, both the petitioners and respondents have the interest, desire in the welfare of the minor children, however, the father has an edge over all the contenders and has opined that the petitioner No.1 being the father is entitled for custody. However, denied the immediate custody, but observed that the same should be in a phased manner in terms of the earlier order passed on I.A.No.8 and the order passed by this Court in W.P.No.25731/2024. The Family Court further ordered that the father i.e., petitioner No.1 shall file separate application under the G&WC Act on the basis of the order passed by it.



CNR: KAHC010714702025

16. As per the records which we have already noticed, several attempts have been made by the father to secure the visitation rights with the children in order to establish bonding and his sentiments with the children and also the love and affection. However, it is the respondents who are coming in the way by not allowing the father to have access to the children. The Writ Court while passing order on I.A.No.7 and 8 has observed that the acts of grand parents in separating the children from the father should be nipped in the bud; or else the father become a guest in the life of the minor children.

17. The Writ Court further observed that mere meeting and spending time with the children in a couple of hours in the court premises etc., under the supervision of other relatives will not survive any purpose of visitation as children would be under the pressure and would not be comfortable. The Writ Court has categorically recorded that when the Court wanted to interact with the child, they were under the pressure of the respondents.



CNR: KAHC010714702025

18. It is also noticed that the son of the respondents has involved in criminal offence punishable under the provisions of Immoral Traffic Prevention Act, 1956. Admittedly the wards are minor girls. Their custody with the respondents in the presence of their son is not in the interest of the children. It is also noticed that the son of the respondents is absconding and now as per the contentions, he is staying in Saudi Arabia. His wife is also not staying with the respondents. The respondents are senior citizens suffering from age old ailments. As per the contentions of the petitioner, that, the children were made to run around 25 to 30 kilometers every day to go to school and tuition and the respondent No.1, who is aged 65 years is taking the children during the evening and night hours to drop and pick up the children from tuition, which is not in the better interest of the children. RW-1 has admitted in his cross-examination that after death of his daughter, the minor children were with the custody of the petitioner No.1 and son of the respondents went to the



CNR: KAHC010714702025

house of the petitioner and took the custody of the minor children with the help of the police.

19. The Supreme Court as well as this Court and all other High Courts across India, in legion of cases have held that, 'welfare of the minor is the paramount consideration'. The Courts while deciding the child custody, must observe the better interest of the children rather than mere legal right of the parent or guardian with respect to the provisions of the personal law and the provisions of Act, 1890. It is not the right of a particular person claiming custody of the minor ward, is the consideration before the Court, rather, it is the welfare and better interest of the child is the paramount consideration.

20. There is nothing brought on record by the respondents to show that there was any complaint by the mother of the children regarding the harassment and demand of dowry. As per the records, both husband and wife were happily residing in Saudi Arabia and gave birth



CNR: KAHC010714702025

to two children. The criminal case which was filed alleging the death of the daughter Numrah Seeneen ended in acquittal holding that the prosecution has failed to prove by cogent evidence the ingredients of Section 304-B beyond all reasonable doubts against the petitioners. As observed by the Family Court, no contra evidence has been placed by the respondents to show that the petitioner No.1 or his relatives are acting against the interest of the children. The petitioner No.1 is having better employment, a own house and educated and would be a better person to take care of the children in their better interest being a father and natural guardian.

21. This Court on 23.02.2026 has observed at paragraph No.5, which reads as under:

"We note from the statement of objections filed that the children are shown in the photographs as hugging the respondents and not interacting with the appellant No.1 or the other appellants. It appears that the children are being tutored. Therefore, the necessity of filing the aforesaid affidavit exists."



CNR: KAHC010714702025

**NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025**

22. The respondents who have been directed to bring the children on the next date of hearing as per Order dated 15.06.2026, failed to appear before the Court on 07.07.2026, which made this Court to issue billable warrant through Arehalli Police Station against the respondents for their presence with children before the Court on 17.07.2026.

23. The respondents are using the children as tools in their hands to deprive the father of their legal custody. It is no doubt true that they have lost their daughter at a young age, perhaps that may be the reason for the respondents to deprive father the love and affection and custody of the children, as they have lost their only daughter, according to them due to the misdeeds of petitioner No.1.

24. The Court exercising the *parens patriae* jurisdiction required to see with whom the better interest, welfare and development of the children could be



CNR: KAHC010714702025

safeguarded as held in several judicial pronouncements of Supreme Court, including ***NITHYA ANAND RAGHAVAN VS. STATE (NCT OF DELHI) AND ANOTHER³; V.RAVICHANDRAN (DR.) (2) VS. UNION OF INDIA AND OTHERS⁴; AND TEJASWINI GAUD AND OTHERS VS. SHEKHAR JAGADISH PRASAD TEWARI AND OTHERS⁵***, etc.. The Family Court though is of the opinion that the custody be given to the father, however it should be in a phased manner, as the immediate custody would not be in the better interest of the children. The order came to be passed on 09.10.2025, we are in almost end of July 2026. Even prior to this, the record clearly shows that there were several attempts made by the petitioner No.1 by making repeated applications, writ petitions and complaints before the Family Court, Writ Court, this Court as well as the Police to secure the compliance of the order granting him visitation rights. The respondents are

³ (2017) 8 SCC 454

⁴ (2010) 1 SCC 174

⁵ (2019) 7 SCC 42



CNR: KAHC010714702025

**NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025**

standing in between the visitation rights depriving the father.

25. As stated above it is the better interest of the children is the paramount consideration and not the better right of either of the parties to the litigation, while deciding the entitlement of custody. The observations of the Writ Court as well as Family Court, when they interacted with the children, that the children were under pressure of respondents. This clearly shows that the children's welfare is not better safeguarded in the hands of respondents. The Family Court clearly records that when the Court showed photo of petitioner No.1, the first child frowned and told that she does not know him, even the second child did the same. Further, it was observed that, when the petitioners were called inside the hall and made to sit opposite the children, but the children refused to even look at them. This prompted us more to opine that the respondents polluting the mind and soul of the children against petitioner No.1, who were earlier to the death of their



CNR: KAHC010714702025

mother, living with petitioner No.1. Children are minor and vulnerable for tutoring. The action of the children supra manifest that, they are being tutored against the petitioners, particularly petitioner No.1.

26. We are of the considered opinion as observed by the Writ Court in writ petition supra, the acts of grand parents in separating the children from the father would have an effect of father just becoming a guest in their life. The petitioner No.1, that is, the father of the minor wards is educated, having a job, earning good salary, that apart, having a own house in Tumakuru. The children are admitted to Euro Kids School, Sakleshpura, Hassan District and respondents are residing in Vattehalli Village. Tumakuru being a city is having better education facility and the petitioner No.1 would provide better education, that would mould the development of the children in a better way, apart from giving them moral as well as ethical values in life.



CNR: KAHC010714702025

NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025

27. In that view of the matter, we find that the observations of the Family Court in the peculiar facts and circumstances, declining to grant the permanent custody to the minor wards required to be set aside. For the following reasons, we pass the following:

ORDER

- i) The appeal is ***allowed***.
- ii) The petition filed by the petitioners under Section 10, 17, 19 and 25 of the Guardians and Wards Act, 1890 read with provisions of Mohammed Law, is allowed, by setting aside the judgment and order dated 09.10.2025 passed by the Court of Principal Judge, Family Court, Hassan, in G and WC.No.13/2023, insofar as granting permanent custody of the minor wards.
- iii) The declaration of the Family Court in respect of petitioner No.1 is unaltered.
- iv) The respondent Nos.1 and 2/maternal grand parents of wards are directed to hand over custody of



CNR: KAHC010714702025

Kum.Amairah Fathima and Kum.Harmain Fathima to petitioner No.1 (Father).

v) The respondent Nos.1 and 2 are permitted visitation rights, which are as follows:

a) Respondent Nos.1 and 2 being maternal grand parents are permitted to take both the children once in fortnight after school hours on Saturday and drop them at 7.00 am on Monday to the residence of petitioner No.1.

b) The maternal grand parents are permitted to call children on video call on everyday between 6-00 to 8-00 p.m and converse for 20-30 minutes.

c) After completion of the final examination of the children of each academic year, the maternal grand parents i.e., respondent Nos.1 and 2 are entitled to take the children for half of the vacation with them and drop the children one day earlier of vacation so that children be prepared for school.



CNR: KAHC010714702025

**NC: 2026:KHC:36840-DB
MFA No. 8148 of 2025**

The petitioners herein shall not come in the way of the maternal grand parents visitation rights granted hereinabove.

Any violation of visitation rights granted herein above may avail maternal grand parents to file necessary application for modification of order.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

RR/TKN
List No.: 1 Sl No.: 7
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