



O.S.A.No.152 of 2022

**WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 13.06.2022**

**CORAM :**

**THE HON'BLE MR. JUSTICE M.DURAI SWAMY  
AND  
THE HON'BLE JUSTICE MR. SUNDER MOHAN, J**

O.S.A.No.152 of 2022  
and C.M.P. Nos.9290 and 9291 of 2022

A. Shaamsudeen Raja .. Appellant

v.

Raneesha P.V. .... Respondent

Original Side Appeal filed under Clause 15 of Letters Patent and Order 36 Rule 11 of Original Side Rules to set aside the Judgment and decree dated 26.04.2022 passed in O.P. No.423 of 2020.

For Appellant : Mr. V.Lakshmi Narayanan

For Respondents : Mr. S. Rajaguru – Caveator

**JUDGMENT**



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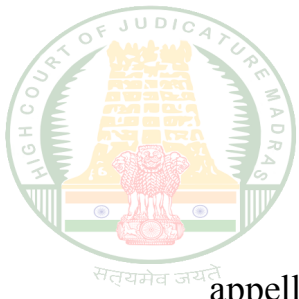
(Order of the Court made by M.DURAI SWAMY, J.)

Challenging the order passed by the learned Single Judge in O.P. No.423 of 2020, the husband has filed the above Original Side Appeal.

2. The appellant-husband filed the Original Petition under sections 3, 7 to 10 and section 25 of the Guardian and Wards Act read with Order XXI Rule 2 and 3 of the Original side Rules praying for grant of permanent custody of the minor male child Armaan Marzuq born on 10.11.2017 and to appoint him as the guardian to the minor male child.

3. The learned Single Judge, by order dated 26.04.2022, dismissed the Original Petition finding that the Criminal Miscellaneous Petition filed by the respondent-wife before the First Class Magistrate III, Palacad, Kerala was dismissed for the reason that the petition was not properly contested by the respondent-husband.

4. Mr. V.Lakshmi Narayanan, learned counsel appearing for the appellant submitted that the minor boy aged 4½ years and the



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appellant-father is having the custody of the minor child right through.

Further the learned counsel submitted that the learned Single Judge dismissed the petitioner without recording the oral and documentary evidences of the parties and solely based on the pleadings. The learned counsel further submitted that the dismissal of the petition by the learned Single Judge without affording an opportunity to the parties to let in oral and documentary evidences is against the provisions of the law, hence, on that ground alone the order passed by the learned Single Judge is liable to be set aside.

5. Mr. S. Rajaguru, learned counsel for the respondent-caveator also submitted that no opportunity was given to the parties to let in oral and documentary evidences by the learned Single Judge.

6. It is settled law that while deciding the Original Petition to appoint the guardian the courts should allow the party to let in oral and documentary evidences. In such view of the matter, on that ground



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alone, the order passed by the learned Single Judge in O.P.No.423 of 2020 is liable to be set aside. The learned counsel on either side submitted that a time limit may be fixed for the disposal of the Original Petition and that both the parties would co-operate for the early disposal of the petition.

7. Accordingly, the order passed in O.P.No.423 of 2020, dated 26.04.2022 is set aside and the matter is remitted back to the learned Single Judge to decide the matter afresh after affording the parties to let in oral and documentary evidences. We request the learned Single Judge to dispose of the Original Petition as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this Judgment. It is made clear that the custody of the child shall remain with the appellant-husband till the disposal of the Original Petition. It is also brought to the notice of this court that an arrangement was made in the Original Petition permitting the respondent-wife to talk to the minor boy through video conferencing during the pendency of the Original Petition. We also make it clear that the said arrangement shall continue till the disposal of the Original Petition. The



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parties are at liberty to file appropriate application seeking for appropriate relief before the learned Single Judge.

With the above observations, the Original Side Appeal is Allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

[M.D., J.] [S.M., J.]  
13.06.2022

Index : Yes/No

Speaking Order/Non Speaking Order

Rj

**M. DURAISWAMY, J.**  
and  
**SUNDER MOHAN, J**

Rj



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