
**5th SURANA & SURANA AND ARMY INSTITUTE OF LAW NATIONAL FAMILY
LAW MOOT COURT COMPETITION 2024**

Before

THE HON'BLE FAMILY COURT, KOLKATA

PETITION No. _____ / 2023

**FILED UNDER S 9(1) OF THE GUARDIANS AND WARDS ACT, 1890
READ WITH SECTION 25 OF THE GUARDIANS AND WARDS ACT, 1890 AND 8(A) OF FAMILY
COURTS ACT, 1984**

IN THE MATTER OF:

AMBIKA

.....PETITIONER

versus

SAKSHI

.....RESPONDENT

MEMORIAL *for* RESPONDENT

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1.	<i>Aarti Rana v. Gaurav Rana and Ors</i>	2019 SCC OnLine HP 2859
2.	<i>Abubacker v. Mariyumma</i>	AIR 1946 Mad 110
3.	<i>Aman Lohia v. Kiran Lohia</i>	2021 5 SCC 489
4.	<i>Anjali Kapoor v. Rajiv Baijal</i>	2009 7 SCC 322
5.	<i>Ashish Ranjan v. Anupama Tandon & Anr</i>	2010 14 SCC 274
6.	<i>Athar Hussain v. Syed Siraj Ahmed and Ors</i>	2010 2 SCC 654
7.	<i>Bal Krishna Pandey v. Sanjeev Bajpayee</i>	2004 AIR 2004 Utt 1
8.	<i>Bandhu Mukti Morcha v. U.O. I</i>	1997 10 SCC 549
9.	<i>Bholaram v. Parwati Sahu</i>	2010 AIR 2011 Chh 38
10.	<i>Bijay K. Prasad v. Ranjana</i>	1999 9 SCC 544
11.	<i>Chanaraj L. v. T. Rajammai</i>	1997 2 CTC 237 36
12.	<i>Chandrakala Menon v. Capt. Vipin Menon</i>	1993 2 SCC 6
13.	<i>Collector of C. Excise, Calcutta v. Alnoori Tobacco Products</i>	2004 170 ELT 135 SC
14.	<i>Commissioner of Income Tax v. Seth Govindram Sugar Mills Ltd.</i>	AIR 1966 SC 24
15.	<i>Dhanwanti Joshi v. Madhav Under</i>	1998 1 SCC 112
16.	<i>Elizabeth Dinshaw v. Arvand M. Dinshaw</i>	1987 1 SCC 42
17.	<i>Gaurav Nagpal v. Sumedha Nagpal</i>	2009 1 SCC 42
18.	<i>Gaytri Bajaj v. Jiten Bhalla</i>	2012 12 SCC 478
19.	<i>Geeta Vohra v. Nitin Chopra</i>	2020 CONT CAS(C) 1017/2019
20.	<i>Goverdhan Lal v. Gajendra Kumar</i>	2002 AIR 2002 Raj 148
21.	<i>Hassan Bhat v. Ghulam Mohamad Bhat</i>	1961 AIR 1961 J&K 5
22.	<i>J. Selvan v. N. Punidha</i>	2007 4 CTC 566
23.	<i>Jai Prakash Khadria v. Srinath Prasad</i>	2001 AIR SCW 1033

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24.	<i>Jijabai Vithalrao Gajre v. Pathankhan and Ors</i>	1970 2 SCC 717
25.	<i>Jinteder Arora and Ors v. Sukriti Arora and Ors</i>	2017 3 SCC 726
26.	<i>Jitendra Sighani v. Harneek</i>	2019 SCC OnLine Raj 6170
27.	<i>Kamla Devi v. State of H.P.</i>	1987 AIR 1987 HP 34
28.	<i>Kasturi Devi v. Deputy Director of Consolidation and Ors</i>	1976 4 SCC 674
29.	<i>Kiran Pujar v. State of Gujarat</i>	2019 SCC OnLine Guj 6085
30.	<i>Kirtikumar Maheshankar Joshi v. Pradipkumar Karunashanker Joshi</i>	1992 3 SCC 573
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41.	<i>Mt. Islaman v. Mt. Maqbulan and Anr</i>	1992 SCC OnLine Oudh JC 107
42.	<i>Muthusami Chettiar v. K. M. Chinna Muthusami Moopananar</i>	AIR 1935 Mad 195
43.	<i>Muthuswami Chettiar v. K. M. Murhuswami Moopananar</i>	1935 AIR 1935 Mad 195
44.	<i>Neelesh Kumar Shukla v. Renuka Shukla</i>	2022 Chhattisgarh High Court CRR No. 468 of 2022
45.	<i>Nil Ratan Kundu v. Abhijit Kundu</i>	2008 9 SCC 413
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47.	<i>Nutan Gautam v. Prakash Gautam</i>	2019 4 SCC 734.
48.	<i>P. Senthil Kumar v. R. Sunitha</i>	2010 SCC OnLine Mad 5990

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49.	<i>R. Chandrasekaran v. C. Umamaheswari</i>	2010 SCC OnLine Mad 3742
50.	<i>R.V. Srinath Prasad v. Nandamuri Jayakrishna</i>	2001 4 SCC 71
51.	<i>Raghavan v. State (NCT of Delhi)</i>	2017 8 SCC 454
52.	<i>Raj Kishore Mishra v. Meena Mishra</i>	1994 SCC OnLine All 545
53.	<i>Rajesh K. Gupta v. Ram Gopal Agarwala</i>	2005 5 SCC 359
54.	<i>Ram Naik Misra and Ors. v. Gauri and Ors</i>	2019 ILR 12 All 1015
55.	<i>Ravi Chandran v. U.O.I</i>	2010 1 SCC 174
56.	<i>Rita D'Souza v. Christopher Diago Zuzarte and Anr</i>	2023 SCC OnLine Bom 2193
57.	<i>Rosy Jacob v. Jacob A. Chakramakkal</i>	1973 1 SCC 840
58.	<i>Sajjan Sharma v. Dindayal Sharma</i>	2008 AIR 2008 Cal 224.
59.	<i>Samuel Stephen Richard v. Stella Richard</i>	1955 AIR 1955 Mad 451
60.	<i>Sangeetha L. v. The Commissioner of Police, Kochi</i>	2002 AIR 2002 Ker 16
61.	<i>Saraswatibai Shripad Ved v. Shripad VasANJI Ved</i>	1941AIR 1941 Bom 103
62.	<i>Shailesh Khandelwal v. Meenakshi Khandelwal</i>	2010 SCC OnLine Chh 223
63.	<i>Shaleen Kabra v. Shiwani Kabra</i>	2012 5 SCC 355
64.	<i>Sharli Sunitha v. D. Balson</i>	2007 1 MLJ 56
65.	<i>Sheila B. Das v. P.R. Sugasree</i>	2006 3 SCC 62
66.	<i>Sheoli Hati v. Somnath Das</i>	2019 7 SCC 490
67.	<i>Shilpa Aggarwal v. Aviral Mittal</i>	2010 1 SCC 591
68.	<i>Shreya Vidyarthi v. Ashok Vidyarthi & Ors</i>	AIR 2016 SC 139
69.	<i>Shyamrao Maroti Korwate v. Deepak Kisanrao Tekam</i>	2010 10 SCC 314
70.	<i>Siddiquunnisa Bibi v. Nizamuddin Khan</i>	1932 AIR 1932 All 215
71.	<i>Sk. Moidin v. Kunhaddevi</i>	1929 AIR 1929 Mad 33
72.	<i>Smriti Madan Kansagra v. Perry Kansagra</i>	2021 12 SCC 289
73.	<i>Smt. Jaswant Kaur and Anr v. S. Manjit Singh Marwah and Anr</i>	1985 AIR 1985 Del 159
74.	<i>Surender v. Sushma</i>	2016 SCC OnLine P&H 4019
75.	<i>Surinder Kaur Sandhu v. Harbax Singh Sandhu</i>	1984 3 SCC 698
76.	<i>Surya Vadanam v. State of Tamil Nadu</i>	2015 2 SCC 183

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77.	<i>Swapna Satpathy v. State of Odisha and Ors</i>	2015 SCC OnLine Ori 291
78.	<i>Swarnalata Mishra v. State of Odisha and Ors</i>	2019 (III)ILR-CUT 269
79.	<i>Syed Saleemuddin v. Dr. Rukhsana</i>	2001 5 SCC 247
80.	<i>Tejaswani Gaud and Ors v. Shekhar Jagdish Prasad Tewari and Ors</i>	2019 7 SCC 42
81.	<i>Thirty Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka</i>	1982 2 SCC 544
82.	<i>V. Sridevi v. C.S. Mani</i>	2019 CMA No 2249/2015
83.	<i>Veena Kapoor (Dr.) v. Varinder Kumar Kapoor</i>	1981 3 SCC 92
84.	<i>Vikram Vir Vohra v. Shalini Bhalla</i>	2010 4 SCC 409.
85.	<i>Viren Bhagwandas Asher v. Damyanti Hemant Matani</i>	2020 SCC OnLine Bom 9275
86.	<i>Vivek Singh v. Romani Singh</i>	2017 3 SCC 231
87.	<i>Walker v. Walker & Harrison</i>	1981 New Ze Recent Law 257

STATUTES

S. NO	NAME
1.	The Guardians and Wards Act 1890.
2.	The Hindu Minority and Guardianship Act 1956.
3.	The Family Court Act 1984.
4.	The Indian Succession Act 1925.
5.	The Hindu Adoption and Maintenance Act 1956.

BOOKS

S.NO	Name
1.	Dr. Paras Diwan <i>Family Law</i> (12 th Edition Allahabad Law Agency 2021).
2.	Mulla <i>Hindu Law</i> (24th Edition LexisNexis 2021).
3.	Sumeet Malik <i>Family Law Manual</i> (2nd Edition Eastern Book Company 2015).

STATEMENT OF JURISDICTION

The Respondent humbly submits to the jurisdiction of the Hon'ble Family Court, Kolkata under Section 9(1)¹ and 25² of The Guardians and Wards Act, 1890 read with Section 8(a) of Family Courts Act, 1984³.

¹ s 9(1) of The Guardians and Wards Act states that the application pertaining to the guardianship of a minor's person shall be directed to the District Court possessing jurisdiction over the minor's habitual residence.

² s 25 of The Guardians and Wards Act states the power of the court for the return of a minor to their guardian's custody if it's deemed in the minor's best interests, even authorizing the minor's arrest if needed for enforcement.

³ In areas where a Family Court has been established, no jurisdiction shall be exercised by any district court or subordinate civil court, as specified in subsection (1) of section 7, concerning suits or proceedings outlined in the Explanation to that subsection.

STATEMENT OF FACTS

Background	Sidhant and Ambika, friends since college, worked at an IT company in Bangalore and married in 2017, welcoming their son Armaan in 2018. Sidhant, from an affluent Kolkata family, struggled with alcoholism, which worsened after his parents died in 2018 leaving an unregistered will.
The Friction	During the COVID-19 work-from-home period, Sidhant did not contribute to household chores, worsening his drinking problem. Ambika, juggling in between work and caring for Armaan, felt isolated due to Sidhant's uncooperative behavior.
Armaan's Health	In August 2020, Armaan was diagnosed with severe Rickets, requiring constant care. Ambika confided in their mutual friend since college, Akash, about her struggles. Once Ambika went out to meet Akash, leaving Armaan with house help, he fell down the stairs but none of the parents came back to see the child.
Ambika leaving matrimonial home	Sidhant's two-month absence in Kolkata for family matters left Ambika overwhelmed with work and childcare. Sakshi stepped in to help temporarily, which Ambika accepted. Later, Ambika accepted a job offer in Delhi from Akash, resigning without informing Sidhant. This, coupled with their marital problems, led to Sidhant's depression and job loss.
Armaan's emotional attachment	Armaan fell ill with food poisoning and was hospitalized, where Sakshi solely cared for him. After Sidhant's tragic passing, he acknowledged Sakshi as Armaan's true mother. Ambika, preoccupied with her new job in Delhi, asked Sakshi to extend her care for Armaan in Kolkata. Under Sakshi's care, Armaan's health and development improved. In March 2023, when Ambika tried to take Armaan to Delhi, he resisted, showing a strong attachment to Sakshi.
Ambika's new household and the present petition.	Ambika confided in Akash about Armaan; he suggested discussing her share in the property with Sakshi. Later, Akash and Ambika married in July. Amidst financial struggles, Akash urged Ambika to bring back Armaan. Upon her attempt to bring him back permanently in February 2024, Sakshi accused her of coveting Armaan for his inheritance, prompting Ambika to initiate the current legal proceedings.

ISSUES RAISED

-I-

**Whether the petition filed by the Petitioner, Ambika, before The Hon'ble Family Court
is maintainable?**

-II-

**Whether the Respondent, Ms. Sakshi, is entitled to legal guardianship of the child
Armaan?**

-III-

Whether the Petitioner is entitled to share in the family property?

SUMMARY OF ARGUMENTS

ISSUE-I

Whether the petition filed by Petitioner, Ambika, before The Hon'ble Family Court is maintainable?

It is most humbly submitted that the present petition is not maintainable due to the Petitioner's continual failure to fulfill her duties as a natural guardian to the child in question. The Petitioner's persistent negligence serves as a primary factor in her incapacity as a guardian. Furthermore, the Petitioner's unsuitability arises from the financial instability prevalent within her current household, compounded by her impending parenthood, which poses significant risks to the child's emotional well-being and financial security.

ISSUE-II

Whether the Respondent, Ms. Sakshi, is entitled to legal guardianship of the child Armaan?

The respondent is legally entitled to guardianship as per the Guardians and Wards Act, meeting all criteria for the child's welfare. Additionally, the respondent's diligent fulfillment of guardian's duties ensures the child's welfare. Furthermore, the child's emotional bond with the respondent emphasizes the necessity of maintaining the custody and guardianship with Respondent for the child's best interests.

ISSUE-III

Whether the Petitioner is entitled to share in the family property and to what extent?

It is most humbly submitted that the Petitioner is not entitled to the share in the ancestral as well as self-acquired property of her deceased husband as her right ceases on her re-marriage.

ARGUMENTS ADVANCED

**I. WHETHER THE PETITION FILED BY PETITIONER, AMBIKA, BEFORE
THE HON'BLE FAMILY COURT IS MAINTAINABLE?**

1. The Respondent humbly submits that the present petition lacks maintainability due to the Petitioner's unsuitability as a guardian. The Petitioner is unsuitable as a guardian because of her careless attitude towards the child. Further, she has failed to fulfill the obligations of a natural guardian on numerous occasions mentioned hereinafter.

1.1. The Petitioner did not fulfil the obligations of a natural guardian.

2. It is most humbly submitted that there were instances where the child required the care and love of the Petitioner but he was consistently neglected. One prominent incident illustrating the Petitioner's negligence is when the child was diagnosed with a severe case of Rickets in August 2020, requiring extra care which the Petitioner failed to provide. Conversely, under the custody of the Respondent, the child's health significantly improved, as acknowledged by medical professionals, highlighting the Petitioner's inability to provide a healthy environment.

3. In the case of *Bandhu Mukti Morcha v. U.O.*⁴ it has been held that “*The child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. Mankind has the best hold of itself. The parents themselves live for them*”.

⁴ *Bandhu Mukti Morcha v. U.O.* 1997 10 SCC 549.

4. Another instance of the Petitioner's irresponsibility is when the child was with the house help and fell from stairs frantic attempts were made by the house help to reach the Petitioner but all of them went unanswered, indicating Petitioner's lack of concern for the child's safety. This negligence of Petitioner can be further drawn from this particular event. When the Petitioner chose to leave the child alone for an entire night despite having the alternative of meeting her friend Akash at her home, showcasing a disregard for the child's well-being.
5. In contrast, when the child was under Respondent's care, the child once had food poisoning and to ensure the proper care of the child the Respondent remained attentive during the child's illness, spending days and nights at the hospital for several days while the Petitioner didn't even once come to visit the child. Additionally, the Petitioner's decision to leave the child again with the Respondent during the last rites of her husband, rather than assuming responsibility for him, signifies a failure to prioritize the child's needs.
6. At this given tender age of the child, merely five years old, the child must receive nurturing and affection from both parents. However, in the unfortunate circumstance of the child losing his father at such a young age, the onus falls upon the mother, the Petitioner, to provide the necessary care and attention to the child. Regrettably, the Petitioner failed to fulfill this fundamental duty, abandoning her responsibility as a natural guardian.
7. Conversely, under the custody of the Respondent, the child has exhibited notable progress in both health and education. Notably, in a judicial pronouncement⁵, the Supreme Court has emphasized the paramount importance of considering the child's overall well-being, including their emotional contentment, physical health, educational development, and conducive living environment, in matters pertaining to guardianship.

⁵ *Gaurav Nagpal v. Sumedha Nagpal* 2009 1 SCC 42.

Also see: *Gaytri Bajaj v. Jiten Bhalla* 2012 12 SCC 478; *Thirty Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka* 1982 2 SCC 544; *Mausami Moitra Ganguli v. Jayant Ganguli* 2008 7 SCC 673.

8. It is humbly submitted that in the case of *Mausami Moitra*,⁶ it has been held that guardianship is about the welfare of the child and not the parent's right to custody. And the Petitioner has consistently demonstrated her failure to discharge the duties expected of a guardian. Her persistent neglect and disregard for the child's welfare serve as clear evidence of her incompetence in fulfilling her obligations. Moreover, it is contended that the Petitioner's sudden interest in seeking custody of the child on the pretext of being natural guardian is motivated primarily by her financial concerns rather than genuine concern for the child's well-being.
9. It is evident that her desire for custody stems from the child's inheritance rights to ancestral and self-acquired property following his father's demise. This pattern of behavior highlights the Petitioner's unsuitability as a guardian and further reinforces the contention that she is undeserving of custody. Custody must be awarded to the party that prioritizes the child's welfare above all else, which the Petitioner has consistently failed to demonstrate.

1.2. The Petitioner is unfit as a guardian.

10. It is respectfully submitted that the Petitioner has exhibited not only negligence but also present inadequacy in her capacity as a natural guardian. It is imperative to underscore that the primary criterion for assessing a guardian's suitability for the custody of a ward is the welfare of the child. The aforementioned incidents unequivocally demonstrate that the Petitioner has failed to fulfill her obligations towards the child's welfare. Consequently, entrusting custody to the Petitioner would not be conducive to the child's well-being, thereby rendering her unsuitable as a guardian.
11. It is contended that the Petitioner has breached the duty of a guardian, it is imperative to note that the current living conditions at the Petitioner's residence are not favorable for the

⁶ *Mausami Moitra Ganguli v. Jayant Ganguli* 2008 7 SCC 673.

Also See: *Rosy Jacob v. Jacob A. Chakramakkal* 1973 1 SCC 840; *Vivek Singh v. Romani Singh* 2017 3 SCC 231; *Rita D'Souza v. Christopher Diago Zuzarte and Anr* 2023 SCC OnLine Bom 2193.

child's well-being. The Respondent emphasizes the unsuitability of the environment within the Petitioner's household for the upbringing of the child, warranting a thorough examination of the circumstances. The Petitioner has failed to provide a nurturing atmosphere essential for the child's growth and development, further exacerbated by the impending arrival of another child amidst the ongoing financial crisis.

12. In the case of *Swati Binaykia v. Abhishek Binaykia*⁷ it was ruled that “Considering the paramount interest of the child, it is better that he remains with the father instead of granting custody to the mother for the reason that if custody is granted to the mother when she has another child with the second marriage, her second husband may not treat the child well and may give preference to their child rather than the child of an earlier marriage of the appellant.” The circumstances herein parallel those presented in the current petition.
13. The Petitioner anticipates the arrival of another child, the Respondent stresses the profound impact this may have on the child's adjustment, particularly given the recent loss of his father and the potential introduction of a stepfather and sibling into their household. This complex familial dynamic, coupled with the ongoing financial strain, creates a challenging environment for the child's upbringing and highlights the necessity for the Respondent to retain custody for the child's best interests.
14. The Petitioner and her spouse find themselves embroiled in financial distress, unable to sustain their financial obligations. The Petitioner has resorted to seeking financial assistance from the Respondent, thereby highlighting the gravity of their financial instability. This precarious situation raises serious concerns regarding the Petitioner's capacity to meet the financial needs of the child. In the case of *Mausami Moitra*⁸ it has been said that financial situation of the guardian is relevant consideration in deciding custody cases.

⁷ *Binaykia v. Abhishek Binaykia* 2019 SCC OnLine Guj 1928.

⁸ *Mausami Moitra Ganguli v. Jayant Ganguli* 2008 7 SCC 673.

15. In the case of *Mt. Islaman v Mt. Maqbulan*⁹, it was judicially determined that a mother's fitness as a guardian was called into question due to her second marriage and the mortgaging of her deceased husband's entire property. Analogously, the present case echoes these circumstances, wherein the Petitioner's second marriage is perceived as a factor influencing her suitability as a guardian. This parallel underscores the gravity of the Petitioner's situation, wherein her pursuit of custody seemingly stems from a desire to alleviate financial hardships, rather than prioritizing the child's welfare as mandated by law.
16. It's crucial to highlight that the Petitioner's involvement with the child has been sporadic. Despite a period of two years, the Petitioner visited only once after a three-month absence, while the Respondent consistently met the child's needs. When custody was sought by the Petitioner from the Respondent, the child expressed a preference for the Respondent, highlighting her genuine maternal role. It indicates the Petitioner's failure to fulfill parental duties and supports the child's best interest lying with the Respondent.
17. The Petitioner's lack of effort to reclaim custody of the child for nearly 1.5 years following the aforementioned incident is noteworthy. Instead, she reached out to the Respondent solely to inquire about her share of the deceased's estate, displaying a clear reluctance to fulfill her parental responsibilities. This behavior demonstrates the Petitioner's unsuitability as a guardian for the child in question.
18. Furthermore, the case of *Jijabai v Pathankhan*¹⁰ it has been held that who takes active involvement in a child's affairs is deemed to be a suitable guardian. It was further said that the father's minimal involvement rendered him unfit for guardianship, as all responsibilities were shouldered by the mother. Similarly, in the present matter, the Petitioner's consistent absence in meeting the child's needs over 2 years indicates her unsuitability as a guardian.

⁹ *Mt. Islaman v. Mt. Maqbulan and Anr* 1992 SCC OnLine Oudh JC 107.

¹⁰ *Jijabai Vithalrao Gajre v. Pathankhan and Ors* 1970 2 SCC 717.

19. It is firmly established by legal precedent, and recently affirmed by the Bombay High Court, that the paramount consideration in matters of guardianship is the welfare of the child in the case of *Rita D'Souza v. Christopher Diago Zuzarte and Anr*¹¹. This principle set by the precedents dictates that guardianship requires more than mere physical custody; it encompasses the diligent protection of the child's rights to health, maintenance, and education¹². In the present case, the Petitioner's evident disregard for the child's welfare depicts her unsuitability for guardianship.

20. Hence, the Respondent humbly submits that the Petitioner's disregard for her child over 2 years, coupled with her sudden interest in the child's property amidst financial turmoil, reveals her motives to be self-serving rather than in the best interests of the child. Consequently, the Petitioner has failed in her duties as a natural guardian and is unfit to assume custody of the child.

II. WHETHER THE RESPONDENT, MS. SAKSHI, IS ENTITLED TO LEGAL GUARDIANSHIP OF THE CHILD ARMAAN?

21. It is respectfully asserted that the Respondent is rightfully entitled to the legal guardianship of the child, as it is deemed to be in the paramount interest of the child¹³ and favorable to his overall welfare. Furthermore, the Respondent diligently meets all the criteria requisite of a legal guardian, with a primary emphasis on the child's welfare. Notably, the child shares a strong emotional bond with the Respondent, and any alteration in custody arrangements may inflict psychological distress upon the child, thereby jeopardizing his well-being.

¹¹ *Rita D'Souza v. Christopher Diago Zuzarte and Anr* 2023 SCC OnLine Bom 2193.

¹² *Nil Ratan Kundu v. Abhijit Kundu* 2008 9 SCC 413.

¹³ The Hindu Minority and Guardianship Act 1956, s 13.

2.1. Child's Best Interest of Welfare is with Respondent.

22. It is submitted that under the Guardians and Wards Act¹⁴, the Court must consider various factors when appointing a guardian, foremost among them being the welfare of the minor. Additionally, Section 17 of the act outlines specific criteria to ascertain what constitutes the welfare of the minor, including but not limited to the minor's age, sex, religion, character, and capacity of the guardian, as well as the wishes of any deceased parent, existing or previous relationship with the minor, the minor's preferences, and the imperative that guardianship not be awarded against the minor's will.
23. Regarding the section 17, it is contended that the Respondent unequivocally prioritizes the child's welfare, diligently fulfilling all obligations expected of a guardian. Financially stable, the Respondent ensures the child's needs are met, thereby satisfying the criteria about the guardian's character and capacity as delineated in the section. Notably, since assuming custody, the Respondent has shouldered all expenses related to the child's well-being, including health and primary education. Moreover, the Respondent provides unwavering emotional support to the child, evidenced by the child's strong preference to reside with the Respondent.
24. Concerning the expressed wishes of the child's deceased father¹⁵, the Respondent seeks to emphasize an illustrative incident wherein the child was hospitalized for approximately six days, during which Sakshi, the Respondent, provided sole care and attention to the child. Significantly, during this period, the deceased father conveyed his sentiments to Sakshi, affirming her role as Armaan's mother in a genuine and profound sense, and urging her to continue caring for their son in his absence. This unequivocal statement articulates the deceased father's desire for the child's welfare and shall constitute to an important factor in assessing the child's best interests.

¹⁴ The Guardians and Wards Act 1890, s 17.

¹⁵ The Guardians and Wards Act 1890, s 17.

25. It is indisputable that from the inception of Armaan's custody with the Respondent, she has diligently discharged all the duties incumbent upon a legal guardian. Despite her professional commitments, she exhibited unwavering dedication to Armaan's well-being, exemplified by her presence and attentive care during his hospitalization. In stark contrast, the child's natural guardian failed to prioritize his welfare, as evidenced by her absence and failure to visit her child even once during his hospitalization.

2.2. Respondent fulfills requirement of legal guardian.

26. Following the diagnosis of a severe case of rickets necessitating additional care, it is imperative to note that upon being entrusted to the care of the Respondent, the child exhibited improvement in his mobility. Notably, the Respondent's dedication and efforts were duly acknowledged by the child's doctor, highlighting her commitment to enhancing the child's health, well-being, and overall welfare. This pivotal incident, along with the Respondent's proactive steps to enroll the child in a play school for his cognitive development, further indicates her role as a guardian.

27. In a recent pronouncement by the Bombay High Court in the case of *Rita D'Souza v. Christopher Diago Zuzarte and Anr*¹⁶, it was adjudged that following an assessment of the child's behavior, a strong emotional bond was observed between the child and the Petitioner-aunt. Furthermore, it was determined that the parents were unsuitable for guardianship owing to their psychological challenges. Notably, in this case the child had been under the care of the aunt since birth, with the aunt assuming sole financial responsibility for the child's upbringing.

28. The circumstances presented in the present petition closely parallel to those of the aforementioned Bombay High Court case, particularly considering the child's bereaved status following the passing of the father and the mother's recognized incapacity to

¹⁶ *Rita D'Souza v. Christopher Diago Zuzarte and Anr* 2023 SCC OnLine Bom 2193.

safeguard the child's welfare. Additionally, the child's expressed preference to reside with the respondent further indicates his emotional attachment to the respondent.

29. The Respondent possesses the capability to provide a conducive environment for the child compared to the Petitioner, who is presently experiencing financial instability and anticipates the arrival of another child. Furthermore, the recent loss of the child's father renders the Petitioner's household an unsuitable environment for the child, particularly considering the potential challenges associated with adjusting to a stepfather and a new sibling at such a tender age. Conversely, the Respondent has consistently demonstrated her ability to efficiently manage all aspects of the child's care.
30. The Supreme Court¹⁷ has repeatedly emphasized the paramount importance of prioritizing the child's ordinary contentment, health, education, intellectual development, and favorable surroundings in guardianship matters. Additionally, due consideration must be given to the child's physical comforts, as well as the inculcation of moral and ethical values. In this regard, it is noteworthy that the Respondent has consistently provided the child with a nurturing environment that fulfills all these criteria.
31. Since being under the care of the Respondent, the child has thrived emotionally, physically, and intellectually, indicating the Respondent's commendable efforts in safeguarding the child's holistic development. It is most respectfully submitted that the Respondent is entitled to the legal guardianship of the child in accordance with the paramount consideration of the child's welfare.

¹⁷ *Gaurav Nagpal v. Sumedha Nagpal* 2009 1 SCC 42.

Also See: *Athar Hussain v. Syed Siraj Ahmed and Ors* 2010 2 SCC 654; *Kirtikumar Maheshankar Joshi v. Pradipkumar Karunashanker Joshi* 1992 3 SCC 573; *Vikram Vir Vohra v. Shalini Bhalla* 2010 4 SCC 409.

**III. WHETHER THE PETITIONER IS ENTITLED TO SHARE IN THE FAMILY
PROPERTY AND TO WHAT EXTENT?**

32. It is respectfully asserted that the Petitioner lacks entitlement to a share in the family property due to her sole right to maintenance from the ancestral property, which ceased upon her remarriage. Additionally, her interest in the self-acquired property of her deceased husband is extinguished upon her remarriage.

3.1. Maintenance right ceases upon re-marriage.

33. It is submitted that late father of Sidhant executed a will bequeathing the ancestral property to Sidhant, the Respondent Sakshi, and Armaan, with the expressed aim of maintaining the property within the Hindu Undivided Family structure and S.87 of the Indian Succession Act¹⁸ clearly states that effect to the intention of testator should be given as much as possible. However, despite the allocation of shares in the will, no partition has been effectuated among the beneficiaries, thereby perpetuating the undivided status of the property. Therefore, it is emphasized that the widow's entitlement to the undivided property is limited to that of maintenance.

34. It is submitted that within a Hindu Undivided Family (HUF), the right to the property is vested exclusively in coparceners, and not in widows who are merely members of the HUF. This legal principle has been affirmed in judicial precedents such as the case of *Shreya Vidyarthi v. Ashok Vidyarthi & Ors*¹⁹ and *Commissioner of Income Tax v. Seth Govindram Sugar Mills Ltd*²⁰. Given the distinction between coparceners and members, it is contended that the petitioner, being solely a member and not a coparcener, was entitled solely to maintenance from the HUF property.

¹⁸ The Indian Succession Act 1925, s 87.

¹⁹ *Shreya Vidyarthi v. Ashok Vidyarthi & Ors* AIR 2016 SC 139.

²⁰ *Commissioner of Income Tax v. Seth Govindram Sugar Mills Ltd.* AIR 1966 SC 24.

35. Further, the Petitioner's right to maintenance has also been ceased under Section 19 (2) of Hindu Adoption and Maintenance Act²¹ and explanation of Section 125 of CPC²² which clearly says that the widow is not entitled to the maintenance on re-marriage. The same has been upheld in the case of Neelesh Kumar Shukla v. Renuka Shukla²³ and Manjushree Gantait v. Suman Gantait²⁴

3.2. Right in property of deceased husband ceases upon re-marriage.

36. It is most humbly submitted that the Petitioner is not entitled to any share in the property of her deceased husband as she has already remarried with Akash. In the case of Kasturi Devi²⁵ the Supreme Court has said that "*We feel that the application of bar of inheritance to the Hindu widow is based on the special and peculiar, sacred and spiritual relationship of the wife and the husband. After the marriage, the wife becomes... an absolute partner and an integral part of her husband "and the principle on which she is excluded from inheritance on re-marriage- is that when she relinquishes her link with her husband even though he is dead and enters a new family, she is not entitled to retain the property inherited by her.*"

37. The aforementioned case clearly says that the on re-marriage she gets excluded from the inheritance rights. The law is not very expressed as to the situation where the widow remarries whether rights on inheritance remains same, but there are precedents which says her re-marriage will not be a bar to inheritance but it is most humbly submitted that the precedents are not to be followed blindly. In the case of Collector of C. Excise, Calcutta v.

²¹ The Hindu Adoption and Maintenance Act 1956, s 19.

²² The Code of Criminal Procedure 1973, s 125.

²³ *Neelesh Kumar Shukla v. Renuka Shukla* 2022 Chhattisgarh High Court CRR No. 468 of 2022.

²⁴ *Manjushree Gantait v. Suman Gantait* 2023 (II) ILR-Cut.

²⁵ *Kasturi Devi v. Deputy Director of Consolidation and Ors* 1976 4 SCC 674.

Alnoori Tobacco Products²⁶ the Hon'ble Supreme Court has made it clear that courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

38. It is submitted that in the present case the Petitioner is just behind the property of the child as well as her deceased husband. Throughout her marital relationship, the Petitioner exhibited neglect towards her late husband, who subsequently suffered from depression and job loss following her abandonment. Despite these circumstances, the Petitioner failed to make any attempt to establish contact. However, it is observed that the Petitioner now seeks to assert her rights over the aforementioned properties, suggesting a potential ulterior motive.

39. It is most humbly submitted that while the law protects the rights of widows for their welfare, the Petitioner in the present instance exhibits sufficient capability to secure her own interests. However, she appears to be attempting to misuse her protected rights to unlawfully acquire the property of her deceased husband. Reference is made to the case of *Raj Kishore Mishra v. Meena Mishra*²⁷ wherein it was emphasized that although widows are entitled to maintenance, such entitlement does not grant them license to abuse their protected rights. Consequently, it is submitted that the Petitioner's sole objective through this petition is to acquire control over the property of her deceased husband and that of her child, with no other discernible motive beyond self-gain.

²⁶ *Collector of C. Excise, Calcutta v. Alnoori Tobacco Products* 2004 170 ELT 135 SC.

²⁷ *Raj Kishore Mishra v. Meena Mishra* 1994 SCC OnLine All 545.

PRAYER FOR RELIEF

WHEREFORE IN THE LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, SUBMISSIONS MADE HERETO AND THOSE TO BE URGED AT THE TIME OF HEARING.

THE RESPONDENT HUMBLY PRAY THAT THIS HON'BLE COURT MAY BE PLEASED TO ADJUDGE AND

- (i) Dismiss the petition of custody filed by the Petitioner.
- (ii) Declare that the Respondent is true and lawful guardian of the child.
- (iii) Declare that the Petitioner is not entitled to any share in the property.

AND/ OR

PASS ANY OTHER ORDER, DIRECTION, OR RELIEF THAT THIS HON'BLE COURT MAY DEEM FIT IN THE INTERESTS OF JUSTICE, EQUITY, AND GOOD CONSCIENCE.

ALL OF WHICH IS HUMBLY PRAYED.

FOR THIS ACT OF KINDNESS, THE RESPONDENT SHALL DUTY BOUND FOREVER PRAY.

On Behalf of the Respondent
Counsel for Respondent

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