courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 04/11/2025

(2010) 1 CTC 429

Madras High Court

Case No: O.P. No. 340 of 2008, A. No. 2574 of 2008 and A. No''s. 2638 and 2639 of 2009

Madras Christian Council of Social Service	APPELLANT
Vs	
V. Rangarajan and Another	RESPONDENT

Date of Decision: Dec. 2, 2009

Acts Referred:

- Guardians and Wards Act, 1890 - Section 10, 11(1)(a)(4), 29, 3, 7
- Penal Code, 1860 (IPC) - Section 498A

Citation: (2010) 1 CTC 429

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: Saseedhevi, Adavocate, for the Appellant; P. Sesubalan Raja, Advocate for Respondent No. 1 and Mr. Thara, Advocate, for the Respondent

Judgement

K. Chandru, J.
Heard both sides. This Original Petition is filed under Sections 3, 7, 8, 9, 10 and 29 of the Guardian and Wards Act, 1890 (for short GAWA) by a Non Governmental Organisation (NGO) by name Madras Christian Council of Social Service, represented by its Executive Secretary. They are seeking for a declaration that they should be the guardian of the person of two minor female children Sushmitha and Subhalakshmi, aged about 12 years and 8 years respectively. In the alternative, their prayer is appointing any other person as guardian to the two minor female children.

2. The first respondent is the paternal uncle and the second respondent is the maternal aunt of the two the minor children. The Original Petition was admitted on 19.05.2008.

3. The case of the petitioner NGO was that the two minor children were the daughters of late Swaminathan and late Uma Rani. They belonged to Hindu religion. The father of the minor children was working as a Section Officer in P.W.D. of the State Government at Aarani. He died of heart attack on 09.05.2007. After the death of her husband, Uma Rani, the mother of the minor children approached the petitioner NGO on 14.11.2007 through a Women''s Organisation by name Pennurimai Iyakam to accommodate her as well as her two children in the Short Stay Home run by the petitioner''s organisation. They were made to stay in the said organisation till 16.02.2008. While she was staying in the Short Stay Home, Uma Rani informed the NGO that her relatives (both on the husband''s side and on her side) were after the properties of their family. She also constantly expressed her fear and apprehension about the danger to her life and the lives of the minor children by their relatives.

4. The late Uma Rani informed to the Counselor of the NGO that she was married to Swaminathan (since dead) during the year 1995. He was an alcoholic and she had treated him at an alcoholic counselling center at Chennai to get rid of his alcoholism. For about one year, her husband stopped consuming alcohol, but later he started consuming alcohol once again. He became mentally sick and was treated at an hospital at Chennai. He was also treated for a throat problem at Vellore during April 2007. After discharge from the hospital, her husband died due to an heart attack. Thereafter, she was compelled to stay with her in-laws in the village. She was also not allowed to move out of the house from her in-laws home in the village. However, she went back to Aarani to lead an independent life so as to stand on her own legs and wanted to educate her children without depending upon any one.

5. It was further stated that she approached the P.W.D. authorities to give her employment on compassionate grounds. But however, Uma Rani''s brothers as well as other relatives were torturing her to part with her money and the immovable properties. When she applied for the Government job it infuriated her own brothers. They forced her and her children to live in Thanjavur. Later they were handed over to her in-laws house to be kept as prisoners in their home. Thereafter, her brothers went to the house at Aarani and informed the landlord that she had become sick. She was admitted to an hospital and that she will not come back to Aarani. They took away all the household articles and 32 sovereigns of gold jewellery along with them. The in-laws of Uma Rani kept her in house arrest and did now allow the children to pursue their education. They did not even provide proper food to her and children. Therefore, she contacted an editor of a newspaper and informed them about her situation and requested him to help out. A News Reporter brought the police and rescued her from the in-laws house.

6. Thereafter, she stayed along with her children in a rented house at Thanjavur. She also approached some women''s organisation to win her freedom. On 09.11.2007, which was a Friday evening, her brothers came with a petrol can and a big Aruval. Her second daughter Subhalakshmi after seeing them from the window started crying. Uma Rani immediately closed the doors and locked it from inside. She also informed the local

police. Uma Rani and her children were taken to the All Women Police Station at Thanjavur. They stayed in the Police Station till the next day morning at the Police Station. On that day, a preliminary enquiry was conducted by the Deputy Superintendent of Police, Thanjavur and her brothers were warned by him. Uma Rani''s brothers assured the police that they will not disturb her any more. But they were continuously threatening her. Therefore, she came to Chennai along with her children and approached the Women''s Organisation. On the basis of the recommendation made by the Women''s Organisation, she was made to stay in the Short Stay Home run by the petitioner.

7. The late Uma Rani also told the Counselor of the petitioner NGO that one Banumathi and her son Kurisil had cheated her to the tune of Rs. 10 lakhs in addition to the gold jewellery. Those two persons were the common relatives from her side as well as from her husband''s side. She also told them that those two relatives are big politicians and influential persons at Trichirapalli. Those two persons did not return her money and jewellery despite lodging several Complaints at Chennai. She also informed the petitioner-NGO that two sale deeds pertaining to the plots purchased in her name and in her husband''s name were missing and that she also gave a police Complaint about it. She went to Thanjavur during the first week of February to give a Complaint to the police with regard to the missing of the property documents and returned to Chennai.

8. On 07.12.2007, the said Uma Rani gave a written letter to the Organisation to take care of her children in the event of her death. Uma Rani later went back to Thanjavur to collect the money from one Kurisil with the help of her cousin Raja. The petitioner NGO advised her about the threat to her life and told her not to venture into such dangerous situation. Unmindful of the said advise, Uma Rani left the Home with her children on 16.02.2008. Later the petitioner NGO came to know that the said Uma Rani had gone to Thanjavur where she was murdered by her own brothers and others.

9. The two minor children were brought back to the petitioner Organisation on 22.02.2006 by one Kumar who is a friend of Uma Rani. The said Kumar informed the petitioner NGO that late Uma Rani requested him to collect the children from her friend''s house and hand them over to the petitioner''s Organisation if anything happens to her life. Hence he brought the two minor children to the Organisation. It is under these circumstances, the two minor children were placed under the custody of the petitioner-NGO.

10. It is stated by the petitioner that they work for the marginalised and vulnerable sections of the urban and suburban poor in Chennai for the past four decades with a professional approach. They have a Family Counseling Center and Short Stay Home and it is funded by Central Social Welfare Board, New Delhi. It is under these circumstances, they have filed the present Original Petition for the relief set out above.

11. Along with the Original Petition, the petitioner filed one Application A. No. 2574 of 2008 to appoint them as interim guardian to look after the two minor children, pending disposal of the Original Petition. When the matter came up on 21.05.2008, notice was

ordered to the respondents. Again when the matter came up on 28.05.2008, the petitioner NGO informed this Court that the two children are studying at Bains School, Kellys, Chennai-10 in VII and III standards respectively and they are staying in the hostel provided by that school. Therefore, this Court taking note of the same, by way of an interim measure permitted the two children to be in the custody of the petitioner-NGO. An undertaking was also obtained from the respondents that they will not give any disturbance to the children. But they were also permitted to visit the children, while in the custody of the petitioner-NGO after advance intimation.

12. Subsequently on 16.09.2008, the first respondent filed a counter affidavit. On behalf of the second respondent a counter affidavit dated 24.04.2009 was filed.

13. In the counter affidavit filed by the first respondent, it was stated that the Petition filed by the petitioner-NGO is not maintainable. The first respondent was the younger brother of the minor children''s father. It was stated that late Swaminathan died in the year 2007 and the funeral ceremonies were conducted by him along Uma Rani (the wife of deceased Swaminathan) in their house at Mela Theru, Thiruverkudi, Thanjavur District. After the ceremonies, Uma Rani wanted to set up her residence at Thanjavur. Therefore, they arranged a rented house at Thanjavur and shifted heir belongings to that house. There was a misunderstanding between her and her brothers regarding her money lending business. The misunderstanding resulted in the murder of Uma Rani. Neither him nor his family members ever got involved in the said dispute and they never thought that it will go to the level of her murder. The first respondent, his parents and other family members wanted to bring up the minor children.

14. They met the petitioner-NGO several times and requested them to hand over the children. They also got a letter of introduction from the Inspector of Police, Thanjavur. Each time when they visited the home, they were asked to wait outside. But later, the petitioner NGO gave a Complaint as if he threatened them. It was also stated that except for providing a Short Stay Home for women involved in trafficking, the petitioner NGO do not have any wherewithal to keep the children and their place is not suitable for keeping the two minor female children. It is also stated that the first respondent''s children are studying in the nearby town at Thiruvaiyaru and they can also put these two children along with them and keep them in their custody without seeking any amount to be received by the minor children on account of the death of their father and mother. They also stated that since the children are girls, their future should grow with the society along with their kith and kin. They cannot be kept in a home which will psychologically affect them.

15. It was further stated that the second respondent is living with her brothers, who were accused in the murder of late Swaminathan and therefore, she is not suitable for keeping the minor children. It is also stated that the first respondent along with his parents are living as a joint family and they are willing to give education at Thiruvaiyaru. Otherwise, the custody of the children may be given to any one of the convents run by some reputed

organisations having their home at Thanjavur or Tiruchirapalli so that the grand parents and other relatives can make periodical visits.

16. In the counter affidavit filed by the second respondent (maternal aunt of the minor children), apart from giving brief background of her sister Uma Rani''s marriage with Swaminathan also stated that her brothers wanted to stop her activities for the sake of her children. But however Uma Rani fascinated by money lending business shifted her residence to Chennai where she continued her lending business. She also received letters several times. She sent many times money orders to help Uma Rani. It was stated that Uma Rani always complained to their mother about her not having a happy married life and all her life was lost due to her marriage with the deceased Swaminathan. It was also stated that the children can grow only with blood relatives and the petitioner is a temporary Welfare Organisation for destitute women. When the children were at Thanjavur, they were brought up and educated by her and her husband. In this regard, the conduct certificate issued by Maxwell Matriculation Higher Secondary School at Thanjavur and a letter from Village Administrative Officer was also produced. It was also stated that the children are in an age group and it is transitional stage into becoming adults. It requires a maternal care and therefore, the custody should be given to her.

17. When the matter came up on 11.06.2009, this Court directed the matter to be listed on 12.06.2009 and the parties were also directed to be present. The minor children were produced in the chambers of this Court and their wishes were also ascertained by this Court. Subsequently, the matter was posted for petitioner''s evidence before this Court on 19.06.2009. Subsequently, it was adjourned to 23.06.2009.

18. It is at this juncture, the petitioner filed two Applications A. Nos. 2638 and 2639 of 2009. The first Application is for grant of police protection to the children pending the main OP. The second Application was to file additional documents. The second Application was ordered as there was no opposition. In so far as the first Application is concerned, both the respondents have filed counter affidavits dated 28.06.2009 and 03.07.2009. Since this Court did not want any harm to the children caused by anybody. Without blaming any one, by its order dated 25.06.2009 directed the Commissioner of Police and Inspector of Police, G-3 Police Station to afford sufficient protection to the minor children who are studying in C.S.I. Bains School at Kilpauk. It was stated that pursuant to the direction, police protection was afforded.

19. Thereafter, evidence of P.W. 1-Ms. Isabel, Executive Secretary of petitioner NGO was recorded on 10.07.2009 and 16.07.2009. She had earlier filed a proof affidavit dated 10.07.2009. Exs. P1 to P13 were marked. She was cross-examined by the respondents on 17.07.2009. On behalf of the first respondent, he examined himself as R.W. 1. Proof affidavit was filed on 23.07.2009 and his evidence was recorded on the same day. Exs. R1 and R2 were marked. The second respondent had filed the proof affidavit on 24.07.2009. He was examined himself as R.W. 2 and she was cross-examined by the petitioner. Exs. R3 and R3 were marked. Evidence was closed 24.07.2009. Subsequently

written arguments were filed by the respondents. Arguments were heard and this Court reserved orders on 30.07.2009.

20. The petitioner-NGO itself had stated that the guardianship of the children may be given either to them or to any other appropriate NGO. The first respondent also stated that in the absence of the custody being given to them, the children can be kept in some other home near Thanjavur. This Court by exercise of its power u/s 11(1)(a)(4) of the GAWA called for a Scrutiny Report from Indian Council for Child Welfare - Tamil Nadu (for short ICCW), which is an empowered Scrutinising Agency nominated by the Supreme Court vide its decision in Lakshmi Kant Pandey Vs. Union of India (UOI),

21. The Scrutiny Report was called for from ICCW, Tamil Nadu regarding the place where the children were studying, the expenditure involved in their study at Chennai, the background of the petitioner-NGO, about their license and capacity to keep the minor children and about the family details of the minor children including that of the first respondent. Subsequent to the order passed by this Court dated 07.08.2009, a report was sent by ICCW (Tamil Nadu) with a covering letter dated 08.09.2009. Pursuant to the order of this Court, a three member team was deputed by ICCW to visit the house of the first respondent at Thiruvedhukudi in Thanjavur District.

22. It was stated in the report that the relationship between the first respondent and their brother''s family was cordial. They also feel that the whole family was willing to have the children back with them or in the alternative they have no objection if the children are left with the custody of the second respondent. It was also stated that the first respondent and his family are willing to send the children to the matriculation school where the other two grand children are studying and did not expect any monetary support.

23. The team of ICCW - Tamil Nadu also visited the house of the second respondent. It was stated that the second respondent''s husband was an officer in the Food Corporation of India. They also expressed their willingness to receive the children with an assurance that they will bring up the children without expecting any monetary assistance. They are also getting rental income and there is a good matriculation school nearer to their residence.

24. The team also met the two minor children. The children told them that they are comfortable in the present school and the hostel. But ICCW is of the opinion, that in the short meeting with the children, they did not open up their mind.

25. With reference to the petitioner NGO, it was stated that they are not running a permanent children''s home and the petitioner NGO are not sure about any future plan to provide a nurturing environment for a very long period of time which requires the children to reach their adulthood. It is also stated that institution cannot be a substitute for the family. Both the respondents'' family were willing to take the responsibility of the children and the ICCW did not find any adverse conditions in these families to keep the children

and to take care of the welfare of the children. The children are also in a confused state of mind and were immature to realise the long term effects of family isolation and prolonged institutional stay. Perhaps they might got a negative feed back due to the adult quarrels and violent death of their mother. Therefore, time is needed to built their trust with their relatives and this Court can allow them to stay in the school till the end of the academic year under the sole or joint guardianship of their family members so that the children''s future is guaranteed.

26. The cross-examination of P.W. 1 on behalf of the petitioner largely went with into the question as to whether they are capable of keeping the children on a long term basis. Since the petitioner NGO itself had stated that this Court can order keeping the children in some other organisation, the only question to be decided is whether the rival claims made by the respondents are to be considered or whether the children should be kept with some other NGO.

27. In the cross-examination of the first respondent examined as R.W. 1, he claimed that he had good terms with his brother Swaminathan before his death. He also stated that he has got two female children studying in Amalraj Matriculation School, Tiruvaiyaru and for each, they were spending Rs. 10,000/- per annum towards their education. He also stated that his father was an elderly person in the family and at no point of time, late Uma Rani was kept in house arrest by their family. He also denied knowledge about the threat to late Uma Rani. He also stated that he undertook to provide education to the two children depending upon his financial capacity. He also denied the suggestion that when he came to Chennai, he tried to threaten the children.

28. In the evidence of the second respondent examined as R.W. 2, she had stated that she was a home maker and her husband was working in Food Corporation of India and presently he is at Mysore. It is stated that she has two sons. Her first son is a M. Tech. Engineer and planning to go to Singapore and her second son is an M.C.A. Graduate working at Singapore. Her relationship with late Uma Rani was cordial. She also stated that she took care of the children. Ex. R3 is the photocopy of the Course cum Conduct Certificate and Ex. R4 is the photocopy of the Certificate issued by the Village Administrative Officer. She denied the suggestion that she obtained false certificate under Ex. R4. She also stated that she visited the children during their stay at Chennai in the Home.

29. From the reading of the oral and documentary evidence produced and also the Scrutiny Report from the ICCW, two questions arises for consideration by this Court:

(i) Whether the petitioner NGO is entitled to have the custody of the two minor children ?

(ii) In the absence of the custody being denied to the petitioner NGO, who should be made as their guardian in the best interest of the children ?

30. The first question can be easily answered because the petitioner NGO itself had made an alternative plea of keeping the children in the Home run by some other agency. Further, in the evidence of P.W. 1 Ms. Isabel, she had stated that they have received fitness certificate from the Government of India only during July 2009 to keep the custody of the children like the present minors. In cross examination, she had stated as follows:

...I have read the counter filed by the first respondent. We do not have any objection for putting the children in reputed home exclusively meant for children.

31. Besides this, the scrutiny agency also stated as follows:

MCCSS does not run a permanent Children''s Home and it is not sure how they plan to provide a nurturing environment for a very long period of time that is required until the children reach their adult hood. They did not clarify us in this regard. Further there is no guarantee that the Director and the care givers would continue to remain in that institution to provide a long time bonding with the children.

32. Apart from this, as rightly pointed out, the institution cannot be a substitute for a family and the two minor children, being girl children they need a home for protecting them as a long term measure and they also require emotional security, social identity for their future adult life. Therefore, in the light of these materials, the claim made by the petitioner NGO for permanent custody of the minor children has to be disallowed. Consequently, their alternative prayer that the children should be kept in some other home nominated by this Court also cannot be accepted as a substitute to bring up the children.

33. In this context, it is necessary to refer to the judgment of the Supreme Court in Nil Ratan Kundu and Another Vs. Abhijit Kundu, In paragraph 52, the Court dealt with the principles governing the custody of minor children which is as follows:

52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a Court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child''s ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor.

(Emphasis added)

34. Very recently, the Supreme Court in Smt. Anjali Kapoor Vs. Rajiv Baijal, , after referring to the decisions of the Courts in U.K., American and Newzealand in this regard quoted those decisions with approval which is found in Paragraphs 19 to 21, and they are as follows:

19. In McGrath (infants), Re, 1893 (1) Ch 143 : 62 LJ Ch 208 (CA), it was observed that, "...The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, or by physical comfort only. The word welfare must be taken in its widest sense. The moral or religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded".

20. In American Jurisprudence, 2nd Edn., Vol. 39, it is stated that an Application by a parent, through the medium of a Habeas Corpus proceeding, for custody of a child is addressed to the discretion of the Court, and custody may be withheld from the parent where it is made clearly to appear that by reason of unfitness for the trust or of other sufficient causes the permanent interests of the child would be sacrificed by a change of custody. In determining whether it will be for the best interest of a child to award its custody to the father or mother, the Court may properly consult the child, if it has sufficient judgment.

21. In Walker v. Walker & Harrison, 1981 New Ze Recent Law 257, the New Zealand Court (cited by British Law Commission, Working Paper No. 96) stated that "welfare" is an all-encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child"s own character, personality and talents.

(Emphasis added)

Therefore, the first question is answered against the petitioner.

35. The second question is whether the custody of the minor children can be given to the respondents. In so far as the second respondent is concerned, it must be stated that her brothers are accused in the Criminal case in Cr. No. 15 of 2008 which is not over. R.W. 2 in her cross-examination had stated as follows:

...I do not know as to whether my brothers killed Umarani and therefore, I cannot say the reasons for her murder. I had cordial relationship with my brothers and I am maintaining cordial relationship with them even now....

36. In this context, it is necessary to refer to the judgment of the Supreme Court in Nil Ratan Kundu and Another Vs. Abhijit Kundu, wherein the Supreme Court dealt with a case of an husband (father of a minor child) facing a Complaint u/s 498-A, IPC. It was held that it may prove the "character" of the guardian. Paragraphs 63 and 64 may be usefully extracted below:

63. In our considered opinion, on the facts and in the circumstances of the case, both the Courts were duty-bound to consider the allegations against the respondent herein and pendency of the Criminal case for an offence punishable u/s 498-A, IPC. One of the matters which is required to be considered by a Court of law is the "character" of the proposed guardian. In Kirtikumar, this Court, almost in similar circumstances, where the father was facing the charge u/s 498-A IPC, did not grant custody of two minor children to the father and allowed them to remain with the maternal uncle.

64. Thus, a Complaint against the father alleging and attributing the death of the mother, and a case u/s 498-A, IPC is indeed a relevant factor and a Court of law must address the said circumstance while deciding the custody of the minor in favour of such a person. To us, it is no answer to state that in case the father is convicted, it is open to the maternal grandparents to make an appropriate application for change of custody. Even at this stage, the said fact ought to have been considered and an appropriate order ought to have been passed.

(Emphasis added)

37. Therefore, the choice can only be the first respondent, who is the none other than the paternal uncle of the minor children. Even during the chamber hearing, the minor children were found talking to their grand parents and did not have any particular objection about them. Therefore, this Court is of the opinion that at present, it is not desirable to grant the custody of the children to the second respondent although, they are not permanently disqualified.

38. The sole objection made by the petitioner NGO against the first respondent was that they came to the school and threatened the children. This Court did not go into the said allegation, but only in the interest of the children gave police protection to the children. But a perusal of the oral and documentary evidence including the Scrutiny Report of the ICCW shows that the first respondent did not suffer from any disqualification. A vague suggestion was put in the cross-examination of R.W. 1 that after the death of the parents, the property may accrue to the children. But the property question can always be sufficiently safeguarded by the appointment of another guardian for their property. Therefore, that need not deter this Court from appointing the first respondent as the guardian of the person of the minor children.

39. Further, a suggestion was also put that they are not having sufficient means to take care of the children, This was stoutly denied by the first respondent. As held by the

Supreme Court in Smt. Anjali Kapoor Vs. Rajiv Baijal, it is not the material welfare of the children alone that counts. More important are the stability and security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child''s own character, personality and talents.

40. Considering that the two minor children are girls and there is no disqualification suffered by the first respondent and he being the nearest blood relationship, this Court hereby appoints the first respondent as the guardian of the person of the minor female children Sushmitha and Subhalakshmi. But the children will not be removed from the school which they are studying at present (Bains school, Chennai-10) till the end of the academic year 2009-2010. They will be admitted to the school in which the first respondent''s children are studying at Thiruvaiyaru from the academic year 2010-2011 onwards. He should take care of the children with utmost care and will not give room for any Complaint.

41. In order to safeguard the interest of the children, ICCW (Tamil Nadu) is hereby directed to have a supervision over the upbringing of the children and send periodical reports to this Court once in six months. They will also monitor the smooth transition of the children from the Bain School after the end of the academic year and arrange the children to be handed over to the first respondent as soon as the academic year 2009-2010 is over. They will also help the children to integrate with the family of their late father.

42. The next question is to safeguard the properties of the minor children belonging to their father Swaminathan as well as the dues available on account of his death from the State Government as well as the properties both movable and immovables owned by their mother Uma Rani. In order to retrieve those properties and also to safeguard their continued possession and ownership on behalf of the children, this Court requested the help of Ms. Geetha Ramaseshan, Advocate to act as the guardian of the property of the minor children. The learned counsel agreed to be the guardian of the properties of the minor children and undertook to secure and retrieve the properties in favour of the children. The Court appreciates her willingness to act as the guardian for the properties of the minor children in an honorary capacity without expecting any remuneration.

43. Accordingly, Ms. Geetha Ramaseshan, Advocate is hereby appointed as the guardian of the properties of the minor children. For the purpose of securing the properties of the minor children and to take appropriate steps to get the terminal benefits on account of the death of their father and also other properties of deceased Uma Rani, she can take appropriate orders from this Court from time to time. She is entitled to defray her expenses in getting the properties retrieved and put them into a Trust for the children from the amounts liable to be received on behalf of the children by filing appropriate Application before this Court. The Original Petition is thus disposed of with the following directions:

(a) The custody of the minor Sushmitha and Subhalakshmi will be handed over to the first respondent after the end of the academic year 2009-2010 onwards.

(b) ICCW (Tamil Nadu) will continue to supervise the welfare of the children and send periodical reports (preferably once in six months) to this Court after making inspection regarding the children''s adjustment with the family.

(c) The second respondent is permitted to visit the children if necessary and can keep them during the summer holidays at their home at Thanjavur.

(d) Ms. Geetha Ramaseshan, Advocate, having chamber at 111-A, High Court Chambers, High Court Campus, Chennai-104 is hereby appointed as the Guardian of the properties of the minor children. She will take all the steps to secure the properties and keep them in Trust on behalf of the minor children. She will submit accounts as and when it is necessary to this Court. She is entitled to seek appropriate directions from this Court for getting the properties retrieved including getting the terminal benefits on account of the death of their father. She is also entitled to sell the properties if their continued possession is not feasible or that the properties may go in waste and will keep those amounts in long term fixed deposits.