
**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 SECTION 8(A) OF
FAMILY COURTS ACT, 1984**

IN THE MATTER OF:

AMBIKA

.....PETITIONER

versus

SAKSHI

.....RESPONDENT

MEMORIAL *for* PETITIONER

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82.	<i>Yashita Sahu v. State of Rajasthan</i>	2020 3 SCC 67
83.	<i>Zahid Ali v. Keshari</i>	1994 SCC OnLine All 696
84.	<i>Zarabibi v. Abdul Rezzak Nakshbandi</i>	1910 12 BLR 891

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).
4.	Surendra Malik and Sudeep Malik <i>Supreme Court on Family and Personal Laws</i> (1 st Edition Eastern Book Company 2016).

STATEMENT OF JURISDICTION

The Petitioner has approached this Hon'ble Court, invoking the jurisdiction of Family Court of 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 with 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 parent came back to see the child.
Ambika's bold decision	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 confiding in Akash about Armaan, he suggested discussing her share in 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 Petitioner is entitled to custody of child?

-II-

Whether the Respondent is entitled to legal guardianship of child?

-III-

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

SUMMARY OF ARGUMENTS

ISSUE-I

Whether the Petitioner is entitled to custody of child?

It is respectfully submitted that the Petitioner is entitled to the custody of the child in accordance with the principle of paramount welfare, aimed at fostering the child's holistic development within a familial environment. Furthermore, the Petitioner temporarily entrusted custody to the Respondent with the understanding that extended family support would be forthcoming during times of distress. Presently, the Petitioner is duly prepared, both mentally and financially, to assume full responsibility for the child's welfare, upon securing her rightful share in the deceased husband's property. This will enable the Petitioner to ensure the child's welfare.

ISSUE-II

Whether the Respondent is entitled to legal guardianship of child?

The Respondent's claim to guardianship is untenable for several reasons. Firstly, the natural guardian is fully equipped and capable to assume custody and guardianship. Secondly, the child's welfare is best served under the care of the natural guardian. Furthermore, the Respondent's single status may impede the development of familial morals and values in the child and may introduce uncertainty regarding acceptance by any future spouse.

ISSUE-III

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

It is most humbly submitted that the Petitioner is entitled to the share in the ancestral property as per Hindu Succession Act i.e., 1/6th share in succeeded ancestral property of her deceased husband and ½ share in the self-acquired property of her deceased husband in the capacity of Class- I heir.

ARGUMENTS ADVANCED

I. WHETHER THE PETITIONER IS ENTITLED TO CUSTODY OF CHILD?

1. It is most humbly submitted that the Petitioner is entitled to the custody of the child in question as the natural guardian, acting in the paramount interest and welfare of the child. According to the provisions outlined in the Hindu Minority and Guardianship Act of 1956⁴, it is expressly mentioned that for a Hindu minor, the natural guardianship concerning both the person and property of the minor, in the case of a boy or unmarried girl, initially vests with the father, and after him by the mother. Furthermore, it is stated that in this case of a child below the age of five years, custody is ordinarily with the mother.

1.1. Paramount Welfare of the child lies with the Natural Guardian.

2. At the outset, it is respectfully submitted that the welfare of the child unequivocally rests with the Petitioner, who holds the status of the natural guardian concerning the child in question. Reference is made to Section 13⁵ of the said act, which highlights the paramount consideration of the child's welfare in matters of guardianship. Additionally, the Guardians and Wards Act of 1890⁶ expressly emphasizes the importance of prioritizing the welfare of the child. Notably, the child has been with the Petitioner since birth and has been meticulously cared for, with an unwavering focus on his welfare.
3. It is submitted that notwithstanding the marital discord between the Petitioner and her deceased husband, the Petitioner has consistently prioritized the health and well-being of her child. Despite lacking the support of her husband as a co-parent, the Petitioner adeptly

⁴ The Hindu Minority and Guardianship Act 1956, s 6.

⁵ The Hindu Minority and Guardianship Act 1956, s 13.

⁶ The Guardians and Wards Act 1890, s 17.

managed the responsibilities of child-rearing alongside her professional obligations and household duties, in spite her husband's struggles with alcoholism. The Petitioner, characterized by independence and sociability, willingly sacrificed her social life for the betterment of her child—a testament to her unwavering commitment to her maternal role in all its dimensions.

4. It is humbly submitted that when the Petitioner decided to relocate for a new job opportunity in Delhi, she conscientiously arranged for her child to reside temporarily with the Respondent. This decision was based on the Petitioner's acknowledgment that she would be unable to immediately establish suitable accommodations and other amenities for her child in Delhi, given her longstanding arrangements in Bangalore. The Petitioner consistently reassured the Respondent of her intention to reclaim custody of the child, Armaan, once she had firmly established herself in her new professional setting.
5. It is submitted that Petitioner's decision to entrust her child's care to the Respondent was motivated by a desire to provide him with a conducive environment and shield him from the challenges associated with her transitional phase. Additionally, given the strain in the Petitioner's relationship with her husband at the time, coupled with her professional struggles, she sought to spare her child from any undue pressures. Consequently, upon receiving the Respondent's offer of temporary assistance in caring for the child, the Petitioner accepted with the explicit understanding that she would bring back the child upon restoring stability both mentally and financially.⁷
6. It is further submitted that the Petitioner's actions were driven by her unwavering commitment to the child's welfare. It is imperative to recognize that the concept of welfare is inherently subjective and must be evaluated on a case-by-case basis⁸. As a judicial precedent, guardianship matters need to be dealt with human touch and should be devoid

⁷ Para No 16 and 19, Moot Preposition

⁸ *Nagendra Kumar Joshi v. Suklal Bandhe* [2023] AIR 2023 Chh 54.

of rigid standards⁹, and in the present case, the Petitioner asserts that her temporary separation from the child was a deliberate sacrifice made in his best interests.

7. After approximately four months of the child being with the Respondent, the Petitioner endeavored to reunite with her child, albeit temporarily, recognizing the need to provide him with care and attention. Despite her sincere efforts, the child expressed reluctance to accompany the Petitioner, a response the Petitioner empathetically understood given the child's tender age and the potential disruption to his routine. This decision underscores the Petitioner's sensitivity to the child's emotional needs and her reluctance to subject him to further upheaval as the Petitioner might have to return the custody of the child to the Respondent as she was not settled properly at the new place.
8. It is further submitted that though the child was under due care and love while living with the Respondent, the same can't disentitle the natural guardian to have custody of her child and the same has been discussed in the case of Nil Ratan Kundu¹⁰ where the court said that "the maternal grandparents were giving "all love and affection" to the child, but that does not mean that the child will not get similar love and affection from his father-natural guardian". However, this case was overruled further and the custody was granted to grandparents only because of the child's preference, and his preference was adjudged to be intelligent and mature enough to make a decision.
9. It is humbly submitted that the Petitioner's subsequent decision to defer to the child's preference and maintain his residence with the Respondent was motivated solely by considerations of his best interest and welfare. Understanding the potential distress associated with frequent relocations, particularly given the child's enrolment in a play school and regular visits to a doctor, the Petitioner prioritized the stability and routine of the child over her desires. And time and again in judicial decisions it has been held that

⁹ *Nil Ratan Kundu v. Abhijit Kundu* [2008] 9 SCC 413.

¹⁰ *ibid.*

guardianship is about the welfare of the child and not the rights of guardians. While acknowledging her ongoing commitment to her child's future, the Petitioner conveyed her intent to the Respondent to reassume permanent custody once she has established a stable and nurturing environment conducive to the child's well-being in Delhi.

10. After the demise of her late husband, Sidhant, the Petitioner entered into a remarriage with her old friend, Akash. Notably, Akash has expressed a genuine willingness to legally adopt the child, thereby extending paternal care and affection which the child had been deprived of in the past due to his biological father's struggles with alcoholism and clinical depression. Recognizing the paramount importance of a nurturing familial environment during the formative years, the presence and involvement of both parental figures are deemed essential for the holistic welfare of the child.
11. In the case of *Bal Krishna Pandey v. Sanjeev Bajpayee*¹¹ wherein the maternal grandfather of the minor contested with the father of the minor for custody of a girl aged about 12 years. The Utranchal High court in that case gave the custody of minor to the father rejecting the contention of grandfather (appellant) that the father (respondent) after his remarriage will not be in a position to give fair treatment to the minor. Rather the father is in a better position to promote the welfare of the child.
12. It is humbly submitted that in the case of *Savitha Seetharam v Rajiv v Vijayasathy Rathnam*¹² a UN Convention¹³ has been discussed about the Rights of the Child, the court said that the convention focuses that a child should not be removed from the custody of natural guardian until the court is of a view that it is against the welfare of the child or the

¹¹ *Bal Krishna Pandey v. Sanjeev Bajpayee* AIR 2004 UTR 1.

¹² *Savitha Seetharam v Rajiv v. Vijayasathy Rathnam* [2020] AIRONLINE 2020 KAR 1865.

¹³ Convention on the Rights of the Child 1989.

natural guardian is disqualified or unfit¹⁴ and welfare of the child varies from case to case and each case must be looked at individually by focusing on the special facts and circumstances to envisage the pros and cons while passing an order on the custody of the child.

13. In the case of *Anand Kumar and Ors v. Lakhan Jatav*¹⁵ it was held that welfare of child lies with the natural guardian if he has sufficient means to take care of the child and has keen interest to take the child and in the present petition, the natural guardian, the Petitioner is keen as well as have sufficient means to promote the welfare of the child.
14. The Respondent's assertion regarding the Petitioner's motive for seeking custody as solely driven by financial considerations is unfounded. The Petitioner emphasizes her genuine efforts to attain stability both financially and emotionally, aiming to provide an improved environment conducive to the child's welfare. Under Section 25 of the Guardians and Wards Act, 1890, the court holds the authority to determine the return of a ward to the custody of their guardian if it deems such an arrangement to be in the ward's best interest.
15. The Petitioner unequivocally states her sole interest lies in securing custody of the minor, disassociating from any claim to the child's share in the property. It is submitted that the Respondent retains the option to petition for guardianship of the minor's estate under Section 15 of the Act¹⁶. The Petitioner underscores her primary concern for the child's welfare, asserting that the natural guardian is best suited to ensure the child's holistic well-being, as delineated by the aforementioned arguments.

¹⁴ *Yashita Sahu v. State of Rajasthan* [2020] 3 SCC 67.

¹⁵ *Anand Kumar and Ors v. Lakhan Jatav* 2022 SCC OnLine MP 3724.

¹⁶ The Guardians and Wards Act 1890, s 15.

1.2. Custody was only temporarily given to the Respondent.

16. It is respectfully submitted that the Petitioner consistently entrusted the custody of the child with the Respondent temporarily, intending to seek support from extended family in times of stress and also, expressly stating her intention to reassume permanent custody once her circumstances permitted. This intent is evident through the Petitioner's persistent efforts toward the child's care and well-being, reflecting her commitment to the child's best interests.
17. The initial transfer of custody to the Respondent occurred upon her offer to care for Armaan temporarily, a proposition to which the Petitioner agreed under the condition that she would reclaim custody upon achieving mental stability on her ongoing marital disputes. Subsequently, when professional opportunities and her marital disputes necessitated the Petitioner's relocation to Delhi, she reiterated to the Respondent her intent to retrieve custody once she had established herself in her new environment and managed to get in a position to provide a conducive environment to the child.
18. It is humbly said that the Petitioner's actions consistently reflected her intention to regain custody of the child, highlighted by her continuous efforts in this regard. Her hesitation to immediately reclaim custody stemmed from genuine concerns regarding her financial stability and the child's well-being in light of her unsettled circumstances. However, upon achieving familial stability with her spouse, Akash, and contemplating her entitlement to her deceased husband's estate, the Petitioner resolved to reclaim custody to provide the child with an improved emotional and financial environment, only to be met with resistance from the Respondent, thus necessitating the present petition.
19. It is respectfully submitted that the decision to entrust custody to the Respondent was facilitated by the supportive role played by the extended family, particularly considering Petitioner's challenging circumstances. Respondent's willingness to assist and care for Armaan during the Petitioner's absence reflects a collective effort within the family to ensure the child's welfare during a period of transition and difficulty and not to deny custody to the natural guardian.

20. The present situation is similar to the case of Tejaswini Gaud and Ors. v Shekhar Jagdish Prasad Tewari and Ors¹⁷ where the court held that merely because the Appellants being the relatives took care of the child for some time, they cannot retain the custody of the child and it is not the case of the Appellants that the first Respondent is unfit to take care of the child.
21. Ultimately, the decision to entrust temporary custody to the Respondent was made in the best interests of Armaan, with the primary goal of providing him with stability and support during a challenging period in his mother's life. It is submitted that Petitioner's actions were guided by her profound concern for her child's welfare, ensuring that his needs remained paramount even in her absence.

II. WHETHER THE RESPONDENT IS ENTITLED TO LEGAL GUARDIANSHIP OF CHILD?

22. It is respectfully submitted that the Respondent does not possess the entitlement to legal guardianship of the child in question, as it is firmly believed that the best interest and welfare of the child lie with the Petitioner. The Respondent's suitability as a legal guardian for the child is called into question, given her current unmarried status and the uncertainty surrounding her future matrimonial arrangements. The lack of certainty regarding the Respondent's future circumstances raises concerns about her ability to provide a stable and nurturing environment for the child.

2.1. Respondent will be a single parent.

23. It is submitted that the Respondent's single status renders her capable of fulfilling only the obligations of a single parent. However, it is imperative to note that the child, being in the tender years of age, necessitates a complete family setup for comprehensive development and welfare, a condition that the Respondent may not be equipped to fulfil. Conversely, the

¹⁷ *Tejaswani Gaud and Ors v. Shekhar Jagdish Prasad Tewari and Ors* [2019] 7 SCC 42.

Petitioner, having remarried, possesses the capability to provide the child with a genuine family environment, thereby promoting the child's welfare and overall well-being.

24. In assessing the suitability of Respondent as the legal guardian of Armaan, it is imperative to delve into the complexities surrounding her status as a single guardian. While acknowledging her commendable efforts in caring for Armaan as an extended family, it is incumbent to scrutinize the potential ramifications of her single-parent status on Armaan's holistic development, particularly in the absence of a complete family structure.
25. In the case of *Smriti Madan Kansagra v. Perry Kansagra*¹⁸, the court gave preference to the father for the guardianship as the mother was living alone. It was said that the inculcation of familial and moral values is pivotal for a child's upbringing. Drawing parallels, in the present petition, the Respondent resides alone, whereas the Petitioner possesses the capacity to provide the child with affection, nurturing, and the holistic family values inherent in a complete familial environment.
26. In *S. Soora Reddi v. S. Chenna Reddi*¹⁹ the court held that child's mother's second marriage, instead of proving to be a disadvantage, has proved to be beneficial for the child who seems to be happy and contented with a complete family. The court gave preference to a complete family over a single parent in this case.
27. Primarily, the role of both maternal and paternal figures in a child's upbringing cannot be overstated. As a single guardian, Respondent may encounter inherent challenges in fulfilling the multifaceted responsibilities typically shared between two parents. The absence of a father figure may engender an imbalance in Armaan's psychological and emotional development, potentially depriving him of crucial paternal guidance and support as he has been never able to get such love of a father earlier but now, he has an opportunity to experience so in Petitioner's new household.

¹⁸ *Smriti Madan Kansagra v. Perry Kansagra* 2021 12 SCC 289.

¹⁹ *S. Soora Reddi v. S. Chenna Reddi* 1950 AIR 1950 Mad 306.

28. Armaan's tender age underscores the significance of stability and consistency in his living environment. While Respondent's dedication to Armaan's well-being is undisputed, the absence of a co-parent to share caregiving duties may exert undue strain on Respondent in a long run, compromising her ability to provide the unwavering care and attention that Armaan necessitates during his formative years.
29. The absence of a complete family unit may limit Armaan's exposure to diverse perspectives and experiences pivotal for his socio-emotional growth. Research underscores the importance of varied role models and support systems in a child's life, aspects that may be curtailed in a single-parent household.
30. In light of these nuanced considerations, it is respectfully submitted that appointing Respondent as Armaan's legal guardian will not fulfil the criteria of moral and ethical environment. The inherent challenges associated with single parenthood raise concerns regarding Armaan's optimal upbringing. As such, it is submitted that the appointment of the Petitioner, with her remarried status and the concomitant potential for a more comprehensive family structure, will better serve Armaan's long-term interests and well-being.

2.2. Potential Impact of Respondent's Future Marriage on Child's Welfare.

31. It is respectfully submitted that in evaluating the viability of Respondent as Armaan's legal guardian, it is essential to consider the uncertainty surrounding her current single status and the potential implications for Armaan's future welfare. While Sakshi's dedication to Armaan's care is on one side but, her unmarried status introduces a level of uncertainty regarding the stability and support Armaan may receive in the future.
32. It is humbly submitted that, as a single individual, the Respondent's future marital prospects are unpredictable. While it is conceivable that she may enter into a relationship or marriage in the future, there exists no certainty that her future partner would readily accept Armaan as part of their family. The absence of a familial bond could result in

Armaan facing rejection or a lack of emotional support from an uncertain step-parent, thereby compromising his well-being.

33. The Petitioner being Armaan's biological mother and with her current husband's expressed willingness to adopt Armaan, presents a more certain and stable familial environment for Armaan's upbringing. Ambika's remarriage and her husband's intention to legally adopt Armaan offer assurances of a cohesive family unit where Armaan's emotional and psychological needs can be adequately addressed.
34. The uncertainty surrounding Sakshi's future circumstances introduces an element of instability into Armaan's life. The lack of a guaranteed support system beyond Sakshi's immediate care raises concerns about Armaan's long-term welfare and emotional development. In contrast, Ambika's stable familial situation, coupled with her husband's commitment to Armaan's adoption, offers a more secure and conducive environment for Armaan's upbringing.
35. In light of these considerations, it is imperative to prioritize Armaan's best interests by ensuring his placement in a stable and nurturing environment for his overall welfare. While Petitioner's love for Armaan is acknowledged, the uncertainties surrounding her future marital status and the potential implications thereof on Armaan's well-being necessitate a thorough examination of alternative guardianship arrangements. Consequently, the appointment of Petitioner, as Armaan's biological mother within a stable familial context, presents a more certain and advantageous arrangement for Armaan's future welfare

2.3. The child is not capable enough to form an intelligent preference.

36. It is respectfully submitted that when evaluating Armaan's capacity to express a discerning preference for selecting a guardian, it is imperative to acknowledge the inherent developmental constraints and cognitive limitations commensurate with his age. Armaan, being of tender years, lacks the cognitive acumen and experiential foundation requisite for making informed choices pertaining to his guardianship. And it has been held and seen in

various judgements²⁰ that preference to child is only given when he intelligent and mature enough to form a choice.

37. In the case of *S. Rama Iyer v. K.V. Natraja Iyer*²¹ held that a minor's opinion is not entitled to any weight when he is incapable of forming any opinion, and that his detention, even if he remains in the custody of his maternal grandfather of his free will, must be deemed to be illegal as against a person who is better entitled in law to have his custody, i.e. his father, and who is desirous to take the minor in his custody.

38. It is asserted that children of Armaan's developmental stage typically manifest attachment behaviors, even towards inanimate objects, as evidenced by his reluctance to accompany the Petitioner from the Respondent's place, with whom he had resided for a relatively brief period of approximately three months. This singular incident, devoid of nuanced comprehension of intricate familial dynamics or legal nuances, highlights the child's current inability to form a substantive preference. Such emotional attachments, albeit transient in nature, accentuate the paramount importance of maintaining continuity and stability in Armaan's life, particularly in the absence of cogent preferences rooted in cognitive deliberation.

39. In *Kota Karrenna v. Kota Paravathamma*²², the court had held that the mere fact that the child since the birth had become attached to the mother or the grand-parents would not have the effect of depriving the father of his right to guardianship of his minor child. Similarly in the present petition just because the child has formed an attachment towards the Respondent due to certain circumstances can not take away the right of the Petitioner of custody over her child.

²⁰ *Kiran Kumar Chava v. Usha Kiran Anne* 2023 SCC OnLine Mad 474.

²¹ *S. Rama Iyer v. K.V. Natraja Iyer* AIR 1948 Mad 294.

²² *Kota Karrenna v. Kota Paravathamma* 1977 SCC OnLine AP 282.

40. It is submitted that the child in question is just about 5 years of age and not well capable to form an intelligent preference and generally in most of the cases the preference of child are taken who are 7 or above years, though this is not a permanent rule and in the case of Aarav Shukla²³ the child in question was about 5 years of age only and the court held that the child was twice interviewed in the chambers and was founded to be too tender in age and totally immature to be able to form any independent opinion of his own as to which parent he should stay with.

41. It is humbly contended that while Armaan may require a period of adjustment upon transitioning to the Petitioner's household, the potential transient challenges associated with acclimatization must be balanced against the overarching welfare considerations delineating his long-term best interests. In assessing the optimal guardianship arrangement, paramount importance must be accorded to the comprehensive welfare of the child, which is arguably better served within the purview of a complete familial unit, inclusive of his natural guardian and additional family members. A cohesive familial structure inherently engenders greater stability and emotional security, thereby fostering a conducive environment for Armaan's holistic development and well-being.

III. WHETHER THE PETITIONER IS ENTITLED TO A SHARE IN THE PROPERTY?

42. It is most respectfully submitted that the Petitioner is entitled to a share in her deceased husband's property as per Hindu Succession Act, 1956. The properties are divided into two heads i.e., Ancestral Property and Self- acquired property. The Petitioner is entitled to the share in both properties of her deceased husband in capacity of Class- I legal heir.

²³ *Aarav Shukla and Ors v. State of U.P. and Ors* [2023] SCC OnLine All 174.

3.1. Share in ancestral bungalow and other ancestral property.

43. It is submitted that the father-in-law of the Petitioner bequeathed his ancestral property, including a century-old bungalow, through a will to Sidhant, Sakshi, and the child Armaan, entitling each of them to an equal one-third (1/3rd) share in the said properties. Following the intestate demise of the Petitioner's husband, as prescribed under Section 8 of the Act the property of a male Hindu dying intestate devolve firstly, upon the heirs, being the relatives specified in class I and the widow and son has been specified in Class I.
44. Further in accordance with Section 10 of the Act, the distribution of shares among Class I heirs is delineated, where each heir is entitled to one share. Given that only the son and widow are Class I heirs in the present case, the 1/3rd share allotted to Sidhant in the ancestral property is to be equitably divided between Armaan and the Petitioner-Ambika. Consequently, the Petitioner's entitlement in the ancestral property amounts to 1/6th share.

3.2. Share in the self- acquired property of deceased husband.

45. It is humbly submitted that pursuant to the provisions outlined in the preceding argument, the Petitioner's entitlement to her deceased husband's property is within the realm of Class-I heirs, with each heir therein entitled to one share. Consequently, in the self-acquired property of Sidhant, the Petitioner stands entitled to a fifty percent share. Given the absence of additional Class-I heirs, the division of Sidhant's self-acquired property would thus be evenly distributed between Armaan and Petitioner-Ambika.
46. It is respectfully submitted that Petitioner's entitlement, as prescribed under the provisions of the Hindu Succession Act, gives her 1/6th share in the ancestral property and 1/2 share in the self-acquired property, given her classification as a Class-I heir. In the case of *Kavilal v. Ratni and Ors*²⁴, it has been held that the fact of remarriage would not take the right to

²⁴ *Kavilal v. Rami and Ors* 2019 SCC OnLine Chh 211.

Also See: *Bayabai v. Saibai and Ors* 1981 SCC OnLine Bom 213; *Velamuri Venkata Sivaprasad v. Kothuri Venkateswarlu and Ors* 2000 2 SCC 139; *Thankam v. Rajan* AIR 1999 Kerala 62; *Cherotte Sugathan and Ors v.*

property held by Ratni in the property of her former husband and that cannot be a ground for her losing right to succeed to her husband's property.

47. It is submitted that despite the Petitioner's rightful claim to the aforementioned share in the property, the Respondent, motivated by malafide intentions, denied such entitlement, purportedly deferring resolution pending legal consultation. It is emphasized that the Petitioner possesses a clear and lawful entitlement to the delineated share, as per the statutory provisions under the Hindu Succession Act and precedents held.

Cherotte Bharathi and Ors AIR 2008 SC 1467.

[5TH SURANA & SURANA AND ARMY INSTITUTE OF LAW NATIONAL FAMILY LAW MOOT COURT
COMPETITION 2024]

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

- (i) Grant the custody of the child to the Petitioner.
- (ii) Grant and Declare the Petitioner's entitled share in the property of her deceased husband.

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 PETITIONER SHALL DUTY BOUND FOREVER
PRAY.

On Behalf of the Petitioner
Counsel for Petitioner

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