Madras High Court
Babubhai Patel And Anr. vs Madavi Patel And Anr. on 21 March, 1978
Equivalent citations: (1979) 1 MLJ 244
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JUDGMENT P. Govindan Nair, C.J.

1. The question that arises in this case is about the custody and guardianship of a minor girl of 8 years, and the contestants for custody and guardianship are the appellants on the one side and the respondents on the other.

The appellants are the grandfather and the mother of a young girl. Soon after her birth on the 7th of January, 1970, in August of the same year her father died. The father and the mother (second appellant) of the girt were at that time in Germany. The second appellant came to India (Ahamedabad) with the baby, where her father, the first appellant, and her mother lived. But she found it difficult to live in India with the baby. She decided to go to the Continent and then to the United States. She left very soon afterwards in December, 1970, and the child was then entrusted to the first and second respondents. They are a couple who are related to the first appellant, the grandfather of the child. The second respondent is the sister's son of the first appellant and the first respondent is the wife of the second respondent. The first respondent is a Bengali and the appellants and the second respondent are from Gujarat. The two respondents have no children. They are admittedly in good circumstances. The mother, after leaving India towards the end of 1970, found her way to the United States and there she got married again, but that marriage did not last long and it ended in divorce. Soon afterwards, however, she found another partner and married for the third time and even that marriage ended in a divorce. She has now married for the fourth time and that marriage, we are told, is still enduring and the couple have a young child. In the meantime, it is clear from the facts that the young girl continued to be in Pondicherry till at least sometime in 1972. The picture from the middle of 1972 to October 1975 is not a very clear one. The trial Court, dealing with the evidence, came to the conclusion that the child was in Ahmedabad during that period and was going to school there. The learned Judge of this Court who dealt with the appeal came to a different conclusion and held that the finding of the trial Court that the child was in Ahmedabad from 1972 to 1975 cannot be accepted.

2. The two respondents in the above circumstances applied under Section 7 of the Guardians and Wards Act, 1890, for appointing both of them as legal guardians of the child. Matters came to a head in 1976 when it was insisted that the child should return to Ahmedabad and the respondents were reluctant to part with the child. This seems to have been the immediate cause for the application for guardianship. In the application, only the first appellant was first made a respondent. The mother of the child go herself impleaded later and also was examined during trial. The evidence in the case consisted mainly of letters which were sent by the mother when she was in the United States as well as the evidence of the second respondent and also the mother of the child, the second appellant.

3. The contention put forward on behalf of the respondents was that the mother had conducted herself in such a way that she had forfeited her legal right to be the guardian of the minor and that in any view of the matter it was not in the interests of the minor child that the minor child should be

entrusted with the mother. They also contended that they had been looking after the child with great care and love and have been showering affection on her, that she has been looked after very well, and that she is being educated properly and is going to school. They further contended that the child has been happy in their, company and that it would be very much against the welfare of the child if she is taken away from them, and they even went to the extent of saying that an estrangement from them would cause a rude shock to the child which might even affect her mind. There is also evidence to show that the respondents are very much attached to the child and are very eager to have the child with them.

4. These aspects were considered by the trial Court and the Court having entered a finding that the child was in Ahmedabad from 1972 to 1975, dealt with the three aspects that were urged before the Court regarding the incompetency of the mother to be the guardian. Those three aspects were that the mother was leading an immoral life, that she had lost interest in the child and that she was a person who changed her views with facility and without concern for the consequences, on matters relating to the custody of the child, and her welfare. The trial Court came to the conclusion that the mother was not immoral. The Court was of the view that in these days marrying very often and changing one's partner with the agility of a tap dancer was not abnormal and in any case such a conduct cannot spell out immoral conduct. The trial Court also came to the conclusion that the mother continued to have interest in one child and finally it found out reasons for justifying the case with which the mother changed her views regarding the welfare of the child and on questions such as the place when the child should live. On these findings, the trial Court felt compelled to grant the custody and guardianship of the child to the mother. In appeal, the learned Judge felt doubts about the correctness of the finding that the child was in Ahmedabad from 1972 to 1975. In fact, the learned Judge found that the finding entered by the trial Court in that regard holding that the child was in Ahmedabad, was not sustainable. Having found this fact against the contention of the mother and the grandfather, the Judge was apparently unable to make up his mind as to what would be the best interests of the child. The Judge, therefore, decided to ask the child, who was at that time seven years of age, and ascertain its own preferences in the matter, and the child very categorically stated that she would prefer to be with the respondents. She also said uncomplimentary things about the mother, and the child at the time of the interview, at which the mother was also present, in clear terms demonstrated her dislike for the mother. The learned Judge found that the mother is an unfit person to be entrusted with the custody of the minor and that the mother cannot be appointed as the legal guardian. In all the circumstances, the learned Judge felt that the best interests of the child would be served if the custody of the child is given to respondents 1 and 2. The learned Judge was also impressed by the fact that the two respondents got very much attached to the child and the child to them. The result of all the above considerations was a verdict in favour of respondents 1 and 2. What we stated above is a brief summary of the history of this unfortunate litigation.

5. Counsel for the appellant has complained that the preference expressed by the child has been given much weight by the learned Judge and further the learned Judge has even brushed aside other vital, considerations in deciding the question. It was also urged that the learned Judge gave too much importance to the attachment of the child to the respondents and their attachment to the child and their claim to have the child with them. Counsel emphasised that the paramount consideration of the welfare of the minor and the legal right of the mother to custody and guardianship, which will

be the most important considerations in a case of this type, had not been given prominence by the Judge.

6. This case requires very delicate handling, a difficult task which we shall endeavour to discharge. The members of the family were living on very good terms at all relevant limes and right up to the beginning of 1976. It is clear from the evidence that till the end of 1975, there has been perfect harmony between the respondents and the grand parents, between the mother and the respondents and among all of them and the other members of the family like the brother and sister of the mother. We shall elaborate. The child was willingly and out of choice left with the respondents by the mother. In fact, it was the desire of the mother that the child should be with the respondents and not in Ahmedabad with the grand parents. She had her own reasons for it. Admittedly, the child was with the respondents till June 1972. It appears from the correspondence that the child was then taken from Pondicherry to Ahmedabad and that respondents 1 and 2 accompanied the child. It is not very clear for what length of time the respondents lived in Ahmedabad at that time. But it is more or less certain that they were there for a few months, perhaps as many as five or six. It is said that the first respondent went to school with the child in Ahmedabad having taken a temporary assignment in the school, because when the child was put to school there, she refused to go to school without the first respondent also accompanying her. This evidence has to be taken with a grain of salt, for in 1972 the child was only just over two years of age. Perhaps she was sent to a baby class. There is no clear evidence. The point to be noted is that during 1972 when the child was in Ahmedabad the respondents were also there. Then the child and the respondents returned to Pondicherry. The child was in Ahmedabad again in 1973, 1974 and even in 1975, and counsel for the appellants is well supported by material which would indicate that the child was in Ahmedabad at least for parts of the year 1973-74 and 1974-75. Here again, we do not get any clear picture excepting the fact that the child was in Ahmedabad for a considerable length of time, not perhaps for the best part of the year in each case, but certainly for a considerable part of the year. But what is significant is that respondents 1 and 2 were also at that time staying in Ahmedabad apparently amicably with the grand parents and all of them were evincing great interest in the child and the child's welfare has loomed large so far as all the relations in India were concerned. In 1975, the child was taken back to Pondicherry with the consent of the grand parents and also with the concurrence of the mother. In these circumstances, we do not think that we should rest our decision on the answer to the question where the child was during the period 1972 to 1975 or for that matter on the finding where the child was since 1975. By the middle of 1975 the child could have been only five years' old and the environments in which she was brought up at the time and the attachments she formed there must have been clearly forgotten by her by now. It is well-known that children of that age will easily forget the surroundings and attachments and they very easily take up to new attachments and new surroundings. There is no evidence as to who looked after the child when she was in Ahmedabad and whether any particular attention was devoted by the grandmother, or the aunt (the sister of the mother) or the uncle (the brother of the mother). But it is clear that they were all staying together and getting1 on very well with each other till about 1975. It is also seen that after 1975 the mother's sister first and then the mother's brother went down to Pondicherry when the child was not well and was admitted in the hospital, and wanted the child to be taken to Ahmedabad. The grandfather also went down to Pondicherry with the request that the child be taken to Ahmedabad. But the respondents were not willing and the child was not well either. Perhaps the illness was exaggerated

by the respondents to see that the child was not taken away to Ahmedabad. Whatever that be, the child continued to be there in Pondicherry till the end of 1975, though by that time the grand parents had expressed their desire to have the child back in Ahmedabad. We must, at this stage refer to the attitude of the mother. The mother in many letters, Exhibits A-1, A-2, A-4, A-7 and A-11, had categorically stated that she wanted the child to be in Pondicherry and not in Ahmedabad. In fact, the change from that attitude took place very much later and the only reason alleged for the change was the alleged behaviour of the second respondent when he went to Ahmedabad in 1975, in not calling at the house of the grand parents to enquire about the illness of the grandmother of the child. This solitary instance alleged by the mother is put forward as a ground for taking the child away from the respondents. But the real reason appears to be the fact that the respondents who got very much attached to the child went about expressing their intention to adopt the child. This was resented by the mother, because she did not want the child to be adopted by the respondents. The reason for this also appears to be not so much that she wanted to claim the child as her own, but her fear as to what people would say if the child was allowed to be adopted by the respondents. Not only the resented it, but there had been a complete change in her attitude after she came to know about the desire on the part of the respondents to adopt the child and she insisted that the child should live in Ahmedabad. This is the picture that we get about the relationship of the members of the family, an Indian family following the joint family system where three generations live together often amicably perhaps with the bickerings, jealousies, differences and quarrels attendant in such a style of living. Till the end of 1975, this family seems to have got on well each member showing affection and consideration for others, though the relationship between the in laws and the other members were not very cordial. The unfortunate circumstances under which this child was born and the unfortunate circumstances in which it became necessary for the mother to leave India and get married three times and the consequent separation of the mother from the child and the desire apparently of the grand parents and of the respondents, not to mention that of the mother, and the conviction of each group and the mother that each of those groups and the mother was best suited to look after the child and its interests, have given rise to this litigation which perhaps could have been avoided.

7. In a case of this type, the paramount consideration is the welfare of the child. We shall now try to consider what arrangement would be in the best interest of the minor. From what we have discussed earlier it is clear that the child was at Pondicherry and Ahmedabad from 1972 to 1975. There is no clear picture as to who exactly looked after the child during this period. But the Advocate-General made one point, which impressed, that even during that time when the child was in Ahmedabad, the child continued to be attached to the first respondent and would not even go to the school without the first respondent accompanying her. It is also clear that the second respondent too was in Ahmedabad for practically the entirely of the period in each year when the child was in Ahmedabad. This aspect is not a matter of much importance, because, the child was very young at that time and we should not emphasise that aspect. On the facts of the case we have to come to the conclusion that the child was looked after by t e respondents as well as by the grand parents during the periods when she was in Ahmedabad, and for a considerable time durding the period 1972 June to 1975 June the child was in Ahmedabad. It is equally clear and it is undisputed that the child was in Pondicherry after she was taken down from Ahmedabad to Pondicherry by the middle of 1975.

8. In a case of this nature, counsel for the appellants Mr. K. Parasaran is well supported by decisions in his submissions that we should not be carried away by the preference expressed by the child. Perhaps Mr. Parasaran is also well supported in his submission that the learned Judge has allowed himself to by swayed too much by what the child said when she was interviewed by the Judge. The rule in England in such circumstances is that the minor's wishes can be ascertained. But if the minor is below the age of 14 in the case of a boy and below the age of 16 in the case of a girl preference of the child is not of much importance. We do not think that the rule in India is any different. Referring to the English law we shall extract the last portion of paragraph 429 of Halsbury's Laws of England, Third Edition, Volume 21, wherein the law is summarised thus:

If the infant is of an age to exercise a choice the Court will take his wishes into consideration. The Court cannot make an order against the wishes of an infant of the age of sixteen years or upwards unless the infant is a ward of Court.

9. To the first sentence in the above extract there is a footnote which states that "there is no English case which had decied at what age a male infant can exercise a choice, but in Ireland it has been held that he can do so at fourteen years, and that as regards females, the age has been held in England to be sixteen years." This Court had to consider this aspect in a decision reported in Saraswathiammal v. Dhatmakotiammal (1924) 47 M.L.J. 614 : 20 L.W. 902 : I.L.R. 48 Mad. 299 : A.I.R. 1924 Mad. 873 where Venkatasubba Rao, J., (at page 376) said:

If an infant capable of forming an intelligent opinion expresses its views, the Court is bound to take them into consideration. In weighing the question what is for the benefit of the child, this will form an important element and the degree of the child's mental development must to a certain extent weigh with the Judge in deciding how far its wishes shall be given effect to. In the same way, the age of the child is also an important factor. It seems to be that the rule that fixes an inflexible limit in regard to age is too artificial, and even if the contention is correct (which in my opinion is not) that such a rule obtains in England, I am emphatically of opinion that there is no warrant for the extension of the doctrine to India where different considerations may apply and different conditions do prevail.

10. The learned Judge thereafter referred to two English decisions and expressed the view that the rule that girls over 10 and boys over 14 may be taken to be persons who can express an intelligent preference, cannot be held to have been established by the ruling in Pollard v. Rouse (1910) I.L.R. 33 Mad. 288. The question was not pursued further because the ward in that case was nearly 18 years of age, and the Court took the view that it has got sufficient intelligence and maturity to express its own preference in the matter. The position is clear that the child must be of an age where it can make an intelligent preference. It is unnecessary to go into more case law in the matter excepting to refer to another decision of this Court reported in Rama Iyer v. Nataraja Iyer (1948) 1 M.L.J. 125 : 61 L.W. 136 : A.I.R. 1948 Mad. 294. There at page 128 is the following passage:

Undoubtedly the minor, after his short stay with his grandfather, has expressed a preference to remain there and his unwillingness to go back to his father. But that we cannot say is an intelligent preference because the boy is under 14 years and as it has been repeatedly held, a child of that

tender age cannot be said to be able to form an intelligent preference particularly in a matter relating to his custody as against the wishes of his natural parents.

11. We need not multiply precedents because the matter is now provided statutorily under Section 17(3) of the Guardians and Wards Act, 1890. Section 17, dealing with the considerations that should weigh with the Court in appointing or declaring a guardian of a minor has stated in Sub-section (3) that if the minor is old enough to form an intelligent preference the Court may consider that preference. The question would, therefore, always be whether the child is of an age and maturity when it will be able to make an intelligent preference as to where it should be or with whom it should be. Certainly, seven years is too tender an age at which the child would be able to make any intelligent preference. Nor attitude at that time will be governed by the immediate past, the way in which she has been brought up, the immediate attachments and her likes and dislikes at the moment which can easily be swayed either by too much affection or even by too much of intelligence which is not in the interests of the child. The view expressed by the child when she is only 7 years of age ought not, therefore, weigh too much with the Court. We well not also attach much importance to what she said about the mother or even the resentment she showed to the mother. All these are inevitable in the peculiar circumstances obtaining; the child has been moving for nearly three years with the respondents continuously and has been looked after by the first respondent with care and affection and apparently with great love, and the mother during this period had been away and her contacts with, the child had been very few and far between and she had almost become a stranger to the child. One cannot expect the child to be friendly with the mother is the above circumstances especially when confronted by the mother in Court in the presence of a Judge. We shall not, therefore, be guided by what the child said at the time of the interview with the Judge.

12. The question then is on what basis are we to decide the very difficult question in this case of custody and guardianship. The statute has provided the guide for, Section 17(1) enacts:

In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section be guided by what consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

The same Act under Section 19(b) has laid down:

Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards or to appoint or declare a guardian of the person-

(a) ....

(b) of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor.

13. At first blush it would appear that there is conflict between the provisions in Section 17(1) and that contained in Section 19(b). But it has been well-settled that there is no such conflict. It is not as

though that in all cases when the father is not unfit to be the guardian, the child should be left with the father. Even in such circumstances the Court will have a discretion in the interest and the welfare of the minor to entrust the child with some their person when circumstances demand it. The position has been clarified by the Supreme Court in the decision reported in Rosy Jocob v. Jacob . The Court observed:

The father's fitness from the point of view just mentioned cannot override considerations of the welfare of the minor children. No doubt, the father has been presumed by the statute generally to be better fitted to look after the children - being normally the earning member and head of the family - but the Court has in each case to see primarily to the welfare of the children in determining the question of their custody, in the background of all the relevant facts having a bearing on their health, maintenance and education. The family is normally the heart of our society and for a balanced and healthy growth of children it is highly desirable that they get their due share of affection and care from both the parents in their normal parental home.

14. The Supreme Court was making those remarks in relation to a dispute that arose between the father and the mother regarding the custody of their minor son. Section 13 of the Hindu Minority and Guardianship Act, 1956, is more specific and has provided in categorical terms in Sub-section (2):

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor.

Sub-section (2) stated so after having provided in Sub-section (1) that the-welfare of the minor shall be the paramount consideration in the appointment or declaration of any person as guardian of a Hindu minor. In view of these statutory provisions we have to consider the welfare of the minor. Counsel for the appellants is again well-supported in his submission that even if the welfare of the minor was the paramount consideration, that cannot be the only consideration. Authorities have been cited for this proposition. Reference was made to the decision in In re An Infant (1969) 2 Ch. 238. After adverting to section for the Guardianship of Infants, Act, 1925, which provided that the welfare of the minor infant was the first and paramount consideration, the Court ruled that it was not exclusive and that the Court, while giving special weight to the welfare of the infant, should consider and weigh all the relevant circumstances. The Court also observed that there was no formula by which that could be done and it must ultimately depend on the exercise of a judicial discretion. To the same effect is the decision in In re, L. Infants (1962) 3 All. E.R. 1 :(1962) 1 W.L.R. 886. Quoting from the headnote which correctly summarises the data, it is seen that although the welfare of the children was of paramount importance, it was not the sole consideration, that it was undesirable that every mother who was otherwise a good mother should be able to break up the matrimonial home on the assumption that she would be allowed to take her children with her and that the Judge in putting consideration of the mother's conduct on one side, had erred in principle in awarding care and control to her. Accordingly in that case the children were directed to remain as the wards of the Court and their care and control was given to the father with reasonable access to the mother.

15. The only other aspect on which counsel cited authorities was for the position that the attachment that certain persons may develop for the child when the child happened to be with them for some time, must not also have too much weight with the Court in deciding the welfare of the child. Counsel relied on the following passage in In re, Thain An Infant (1926) 1 Ch. 676 at 682:

She is nearly seven years old, and from her very earliest infancy down to the present time she has lived with Mr. and Mrs. Jones, and been brought up with their own two children and as a member of their family. But she is the only child of her father, and as he is now in a position to provide her with a permanent and suitable home, he desires to enforce his right to her control and custody. It is happily a case in which no suggestion of unfitness on either side is involved, and I am satisfied the child will be as well cared for and be the object of as much solicitude in the one home as in the other. In these circumstances, according to well-settled practice, the claim of the father must prevail, unless the Court is judicially satisfied that the welfare of the child requires that the parental right should be superseded.

16. These are well-accepted principles and we have to decide on the guardianship of the girl on the basis of the principles so laid down. Admittedly, the mother, in the absence of the father, as in this case, is the legal guardian. Normally, the mother has got the right to demand that nobody else should be declared the legal guardian of the child, especially in the matter of a girl of tender years, who is just over eight years of age now. The mother is an indispensable element in her life and the Court has to think several times over before severing the natural ties between a mother and her daughter. Unfortunately, in this case such ties had been severed, perhaps irrevocably, but we hope not quite, long back by the conduct of the mother herself. The child was left alone in India when she was not even a year old and she remained away from the mother for all those eight years. The present circumstances of the mother are such that there is no possibility of her coming back to India to settle down in India to look after the child. Not that this is necessary. It may be possible for the child being taken to the United States and taken care of by the mother there. But is there any possibility that this can be done by the mother? The mother has, of course, claimed that she would take the child to the United States. But she has not put forward any practical suggestions regarding this. Her life has been a chequored one to put it very mildly. Her first home was wrecked by no fault of hers. The second and third homes could not be maintained and the fourth home has now commenced, and let us hope that it would continue to be a home for the rest of her life or would it? How can one be certain? It will not be correct or wise or even advisable in a case of this type for us to judge too harshly on the views and ways of the mother, because that too can harm the child and harm the relationship between the mother and child. We, therefore, shall refrain ourselves from saying anything categorical and we shall not be too critical of even express ourselves strongly. We shall use very guarded language. But we cannot help remarking that the mother has clearly demonstrated her intense desire, from which she is unable to extricate herself, of having what she considers to be a full and free life of her own and she had at no time evinced any particular concern for the life and future of the child or its welfare. If she has any concern for these matters - we suppose she as a mother would have such considerations - she had not allowed those considerations to stand in the way of having her own life in as free, gallant and cavalier a fashion as her whims and fancies indicated. That is an unusual attitude on the part of any mother, particularly an Indian mother, brought up according to Indian traditions. Her life has been an adventurous one quite

abnormal, for any woman and much more so for an ordinary Indian woman. But it is not for us to sit in judgment on this attitude of hers. But we advert to them only to show the attitude of the mother towards the child and in connection with the question of the welfare of the child if entrusted to her. In the United States it is a well-known fact, of which we can take judicial notice, that it is very difficult to bring up a child, particularly when the child is to be brought up in a house where both the husband and the wife are working. The mother too is now admittedly working. Perhaps it is necessary for her to continue to work. The husband is not the father of the child. He has got his own child by the mother. How far the atmosphere there will be conducive for the Indian child that had not seen her mother for eight years, is a problematical one. In these circumstances, to entrust the child with the mother would be a very hazardous venture on which no one should attempt to launch upon. We have, therefore, to negative the claim of the mother when she claims that she should be allowed to take the child away, basing her claim mainly, if not solely on her legal right, as the guardian of the minor child. Counsel for the appellants to some extent realised the difficulty of sustaining the case of the mother that she should be allowed to have the child with her, and, therefore, put forward an alternative case, without prejudice to the claim of the mother that she must be given the child, that the grandfather must be given the child, that the grandfather must be entrusted with the child. From all accounts the grandparents were attached to the child. The femily in Ahmedabad is a joint family. The mother never liked the atmosphere there. She has been apprehensive of the in-laws by the first marriage claiming the child or taking it away. The child was in Ahmedabad for long spells till the end of 1975. The mother had said repeatedly in the letters that the child should be in Pondicherry. She went to the extent of saying that the child should be given to the respondents. She must then have had so much of confidence in the respondents and so much of lack of confidence in the child being in Ahmedabad. There have been confrontations in the family at Ahmedabad too. There was a daughter-in-law who was not able to get on well with the other members of the family. There is a daughter who is likely to get married. The grandmother has not been doing well. The grandfather is a businessman and well past 60. Hence he is not best suited to look after a young girl eight years old. The girl must have the company of an elderly woman who will look after its interest. There is none such in Ahmedabad to look after the interest of the child.

17. In view, of the circumstances that prevail in Ahmedabad, that cannot be served by entrusting the child to the grand-parents. After all, thegr and-parents have no legal right or claim, though they are in proximity of relationship nearer to the chlid than the respondents. But the respondents are not strangers either. They are certainly closely related. They have no other encumbrances. They have got sufficient means. They are very fond of the child. Nobody has suggested that they would not care for the interest of the child. In these circumstances, we have to uphold the decision of the learned, Judge that the child must be left with the respondents.

18. Any arrangement in a matter of this type can only be a temporary measure and cannot be a final one, not even final till the child reaches the age of discernment, which would be many years hence, for circumstances can change. We therefore make it clear that the order passed now is subject to modifications on cause being shown for such change. It would therefore be open to the parties to approach this Court for any directions or even change of custody of the child if reasonable compelling and supervising events justify such a course being adopted.

Another aspect we should clarify is the provision for the mother and other relatives for access to the child for after all, a natural mother can be never substituted whatever may be said1 against them other. The child m y feel one day, if her ties with that mother are rent asunder for ever, that injustice had been done to her Any direction that we give, therefore, must have this aspect in mind. We have, therefore, provided access for the mother to the child. We must also provide access for the grand parents to the child. We thought that it maybe possible for the respondents to come to some workable arrangements with the mother and grand-parents even when the case had reached the stage of final decision, and expected a compromise in regard to the custody of the child, so that all may take-interest in the child and the child may get to know the grand-parents and other relations, particularly the mother well, so that she will grow up in a very healthy atmosphere, which is necessary and conducive to the development of a healthy and balanced personality; only we are happy to note that the Advocate-General appearing for the respondents stated before us that the mother will be welcome to visit the child whenever she comes to India and that the respondents would be willing to allow her to stay with them and the child to enable the mother to create a relationship of love and affection between the mother and daughter. We consider that the respondents must provide opportunities to the other relations such as grand-parents, uncle and aunt of the child, to visit the child and spend time with her. In all the circumstances and the past history and relationship of the relatives with the minor considerations may arise whether it would be necessary and desirable to take the minor to Ahmedabad. Provision will have to be made for this contingency also.

19. In the light of the above discussion we uphold the discretion exercised by the learned Judge in the Judgment under appeal that the respondents must be appointed as the legal guardians of the minor. We further give the following directions:

1. It would be open to the mother to visit the child at Pondicherry whenever she wants. On those occasions the mother will be the guest of the respondents and will stay with them and the minor. The respondents would do everything in their power to make such visits pleasant and happy.

2. In circumstances when the mother has compelling reasons to take the child to Ahmedabad during her visit to India, she may move this Court for directions. If a strong case js made out for that, the Court will give directions in that regard. Such orders will be passed only if it is in the interests of the child to be taken to Ahmedabad. And if such a direction is given the child will have to be accompanied by the respondents. The child, if taken to Ahmedabad, must be with the grand-parents and grand-parents only and the respondents must be permitted to live in the same house with the minor and not separately from her.

3. The grand-parents and the uncle and aunt are permitted to visit the child in Pondicherry.

4. This Court may be moved by the appellants and the respondents for any directions as are considered just and necessary in the interest of the minor.

20. We must leave it to the mother, the respondents who appear to love the child very much, and the other close relations like the grandparents to work out satisfactory arrangments for the welfare of

the minor. Only their good will tolerance and attachment to the child which we feel still exists can solve the difficult situation. It would be a good gesture on the part of the respondents to invite the mother periodically to stay with them and also invite the other near relations referred to above to visit the minor, The mother and other relations should not attempt to take the child out without the consent of the respondents and should take care not to harm the relationship in any manner. The mother should not approach this Court for taking the minor to Ahmedabad without special and compelling reasons and there must be no disruption of the studies of the minor. It is not possible to deal with or anticipate the probable problems that can arise in an extraordinary situtation such as that obtaining in the case and we can only conclude by repeating what we have indicated that goodwill and real consideration for each other and the paramount consideration of the welfare of the minor would solve all problems and we expect the relations including the mother and the respondents to act and conduct themselves in a reasonable, fair and considerate manner having in mind only the welfare of the minor.

21. We dispose of this appeal in these terms We direct the parties to bear their own costs throughout.