

**In Re: Sister Gemma**

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**SooperKanoon Citation :** [sooperkanoon.com/786677](http://sooperkanoon.com/786677)

**Court :** Chennai

**Decided On :** Feb-14-1969

**Reported in :** AIR1970Mad262

**Judge :** Ismail, J.

**Acts :** [Guardians and Wards Act, 1890](#) - Sections 17

**Appeal No. :** Original Petn. No. 16 of 1969

**Appellant :** In Re: Sister Gemma

**Advocate for Pet/Ap. :** A. Dorairaj, Adv.

**Disposition :** Petition allowed

**Judgement :**

**Ismail, J.**

1. This petition has been presented under Sections 4, 10 and 17 of the Guardians and Wards Act 1890 and Clauses 17 and 20 of the Letters Patent. The petitioner is a member of a Christian Religious congregation known as the Salesian Missionaries of Mary Immaculate. The members of the congregation are devoted to social work and care of the needy, destitute and sick persons who are unable to look after themselves. The petitioner as a member of the said congregation is at present in charge of the Mercy Home at Kilpauk, Madras which looks after and

caters for the abandoned and incurably sick. In the course of her work in the Mercy Home, the petitioner came into the custody of Noel Sanderchan, the minor. She was sent to the Mercy Home as unclaimed, an orphan and destitute by the Sub-Inspector of Police. G. 3. Kilpauk. Madras 10, on 29-12-1967, as having been picked up at Kilpauk Garden road. At the time of her admission the minor was stated to be 5 days old, said to have been born on 24-12-1967. By virtue of the fact that the child was admitted to the Mercy Home, the petitioner has been the de facto guardian of the said minor to the knowledge of the police authorities from 29-12-1967 onwards. In August 1968, a citizen of France by name Madame Basdevant expressed a wish to take charge of the minor, maintain, educate and protect her. At the instance of the petitioner, she appeared before the Embassy of India at Paris and in the presence of the Third Secretary gave an undertaking to bear the cost of the passage of the said minor from India to France, to provide for her during her stay in France and to repatriate her at her cost to India, when necessary. The said undertaking has been attested by the Consular section of the Embassy of India. Paris. It is under these circumstances, the present petition has been filed for the appointment of the petitioner as the guardian of the person of the said minor Noel Sanderchan and to permit and authorise the petitioner to transfer the child to France to be taken care of maintained and educated by Madame Basdevant residing at No 110 Ave Jean Batiste Clement, Boulogne Paris, France.

2. The petitioner and the relief claimed in the petition are somewhat peculiar. Normally a Court exercising powers and functions in respect of guardians and minors does not appoint a guardian for the purpose of transferring the custody of the minor concerned to a third party, that too outside the jurisdiction of the Court. But that is not an inflexible rule of law. It was pointed out by Venkataramana Rao J. in *Raiah of Vizianagaram v. Secretary of State for India*, ILR 1937 Mad 383 : A1R 1937 Mad 51:

'It is a recognised principle of English Courts that an infant should not be sent out of their jurisdiction. Of course, it is not an inflexible rule and there are exceptions to it. But it is an invariable rule; vide *Mountstuart v. Mountstuart*, 1801 6 Ves Jun 363 : 31 ER 1095. In *Campbell v. Mackay*, 1837 2 My & Cr 31 : 40 ER 552. Lord Cottenham L. C. delivered himself to the same effect at p. 553 (40 ER); in the case

of 1801 6 Ves Jun 363, Lord Eldon appears to have said that the Court never makes an order for taking the infant out of the jurisdiction. Subsequent decisions show that exceptions are sometimes made to the rule, but such exceptions are and ought to be very rare. Since I have held the Great Seal I have had reason to lament that the rule has not been more strictly adhered to','

3. Bearing this principle in my mind, the question for consideration is whether there are exceptional and rare circumstances present in this case justifying this Court appointing the petitioner herein as the guardian of the minor in question and authorising her to transfer the child to France. The most striking feature of this case is that the child is a destitute and there is nobody to care for it and nobody to claim it. Under these circumstances, obviously it will be in the interests and for the welfare of the minor that the petitioner should be appointed as guardian and should be authorised and enabled to transfer the child to France to be taken care of and educated and provided for by Madame Basdevant who had expressed a wish to do so and who had also given an undertaking that she will repatriate the child back to India, whenever necessary, at her cost. This constitutes indisputably a very rare and exceptional circumstance which will warrant and justify this Court appointing the petitioner herein as the guardian of the person of the minor and authorising her to transfer the child to France to be taken care of and maintained and educated by Madame Basdevant. For this reason, I allow this petition and appoint the petitioner herein as the guardian of the person of the minor Noel Sanderchan and permit and authorise the petitioner to transfer the said minor to France to be taken care of, maintained and educated by Madame Basdevant, residing at No. 110, Ave Jean Batiste Clement, Boulogne, Paris, France.