

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 309 of 2023

Petitioner :- Baby Nyara

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Manoj Kumar

Counsel for Respondent :- G.A.,U.C. Chaturvedi

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Manoj Kumar learned counsel for the petitioner, Sri U.C. Chaturvedi, learned counsel for respondent no.4 and learned A.G.A. for the State.

2. This habeas corpus writ petition has been filed on behalf of Baby Nyara through her mother Smt. Aasmeen against State and private respondent no.4 Arif.

3. Submissions in the petition are that Smt. Aasmeen and Nasir Ali were husband and wife and they by mutual consent obtained divorce and have been living separately since execution of a settlement deed between the two on 28.01.2023. Later on Nasir Ali died on 07.02.2023 in an accident. After his death, his wife Aasmeen was turned out of her matrimonial home by in-laws and since then mother of corpus has been applying to the superior police authorities for grant of custody of her about 10 months old minor daughter but no action has been taken. It is submitted on behalf of the petitioner that she has been kept in illegal custody of respondent no.4, Arif who happens to be one of the family members of her late husband.

4. It is submitted on behalf of respondent no.4 Arif that the husband and wife started living separately out of mutual settlement and that it was also settled between them that only infant daughter shall stay with her father and, therefore, after her father's death corpus is staying with respondent no.4 (who happens to be real brother of Nasir Ali). It is further submitted that she herself handed over the custody of her minor child to her husband voluntarily and that she has now no claims over the corpus. This development of seeking custody through habeas corpus writ petition, has taken place just to negotiate the property rights.

5. This is not disputed that Smt. Aasmeen is real mother of the corpus. And corpus is merely one year old. This is not disputed that she is presently in custody of respondent no.4, who is not father of the corpus. The compromise/mutual settlement deed was, if at all, it had any legal ramifications could bind the husband and wife only. Since husband has died hence whole of scenario stands changed. Moreover, the best interest of child cannot be subservient to any private arrangement between parents. In my view, the rights which the father had by virtue of this settlement deed cannot be said have been inherited by father's real brother. He is having no right over minor child and therefore, his custody is nothing but illegal.

Hence, this habeas corpus writ petition is **allowed as below.**

The respondent no.4, Arif is directed to immediately hand over the custody of Baby Nayara to her mother Smt. Aasmeen. The respondent no.2 shall ensure compliance of this order.

Order Date :- 30.10.2023

Asha