

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal (M) No.9 of 2012**

Smt. Neel Kumari Sahu W/o Basant Kumar Sahu, aged about 30 years, Resident of Village Pangaon, Thana & Tahsil Pamgarh, Distt. Janjgir-Champa (C.G.)

---- Appellant

Versus

1. Basant Kumar S/o Hira Sai, aged about 35 years.
2. Hema Kumari Sahu, aged about 5 years, Minor.
3. Tripti Kumari Sahu, aged about 7 years, Minor.
4. Roshan Ranjan Sahu, Aged about 11 years Minor.

On behalf of all above three minor guardian father Basant Kumar Sahu guardian father Basant Kumar Sahu S/o Hira Sai, all caste Sahu, Resident of village Semaria, Thana and Tahsil Pamgarh, Distt. Janjgir- Champa (C.G.)

---- Respondents

For Appellant	Mr. Ashok Patil, Advocate, along with the appellant & respondent No.3
For Respondents	Mr. Dilman Rati Minj, Advocate.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board

02/03/2015

1. By filing the instant appeal under Section 19 of the Family Courts Act, 1984, the appellant has challenged legality and propriety of the order dated 16-12-2011 passed by the Judge, Family Court, Janjgir, Distt. Janjgir-Champa in Civil MJC No.9/2011, whereby the Family Court has permitted the continuance of custody of respondent No.3 with the appellant and the custody of respondents No.2 & 4 Hema Kumari Sahu & Roshan Ranjan Sahu, respectively, with respondent No.1.
2. As per record of the Family Court, respondents No.2 to 4 are legitimate children of the appellant and respondent No.1. Respondent No.1 ousted the appellant from his house in the year 2009 and he also snatched respondents No.2 to 4, then she filed

petition for custody of respondents No.2 to 4 before the Family Court on 15-2-2011 with an averment that welfare of respondents No.2 to 4 is with her and not with respondent No.1.

3. By filing reply, respondent No.1 has denied the adverse allegation. The appellant is living adulterous life and welfare of minors is with respondent No.1, not with the appellant.
4. After providing opportunity of hearing to the parties and asking the view of respondents No.2 to 4, the Family Court dismissed the petition filed on behalf of the appellant by holding that respondent No.3 is residing with the appellant
5. We have heard learned counsel for the parties, perused the order impugned and record of the Family Court.
6. Evidence of both the parties reveal that respondent No.1 is capable to maintain his minor children respondents No.2 to 4, but respondent No.3 is residing with the appellant. Any application for custody of respondent No.3 has not been filed by respondent No.1. Respondent No.3 is present in the Court along with the appellant.
7. Considering aforesaid facts, we make a note that respondent No.3 Tripti Kumari Sahu is in the custody of the appellant and respondents No.2 & 4 are in the custody of respondent No.1. We do not find any ground to hold that welfare of respondents No.2 & 4 is with the appellant and not with respondent No.1.
8. Consequently, the appeal is liable to be dismissed and is hereby dismissed with aforesaid note and observation. No order as to costs.

JUDGE

JUDGE