

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

FAO No.3745 of 2014

DATE OF DECISION: January 07, 2015.

Paramjit Kaur and others

....APPELLANTS

VERSUS

Baljinder Singh

....RESPONDENT

CORAM :HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. B.P.S. Virk, Advocate
for the appellants.

Mr. Jagjit Singh, Advocate
for the respondent

SNEH PRASHAR, J.

1. This is a first appeal under Section 47 of the Guardians and Wards Act, 1890 (for short "the Act ") by Paramjit Kaur and others appellants(respondents in the original petition) against the judgment dated 06.12.2013 passed by the learned Additional Civil Judge Senior Division Kharar, by virtue of which the petition filed by Baljinder Singh respondent seeking directions to Paramjit Kaur etc. to hand over to him the custody of minor sons, was allowed.

2. The facts extracted from the record are as under:

Appellant-Paramjit Kaur and respondent-Baljinder Singh were married on 20.01.1999 as per Sikh rites and rituals and out of their

wedlock two children namely Sukhbir Singh and Lakhdeep Singh were born who are still minors.

The minor children being in custody of appellant-Paramjit Kaur and there being a marital discord, Baljinder Singh filed the instant petition invoking the provisions of the Act for claiming the custody of the minor children. He submitted that Paramjit Kaur had filed a petition under Section 125 of the Code of Criminal Procedure wherein she had pleaded that she had no source of income for providing education and other necessities to the minor children. On the other hand he(Baljinder Singh) is serving at Chandigarh on contract basis with U.T. Government; his children are studying in a Government Model School, Sarangpur, U.T. Chandigarh, which is an English medium school. In the year 2007, when he had gone to attend his duty, Paramjit Kaur had taken away the minor children and ornaments etc. and had gone to her parents house thereby leaving his society without any rhyme or reason. Despite requests by him to her and her parents, she did not return.

Pleading that Government Model School at Village Sarangpur was very near to his village and that for the welfare of the minor children he wants to keep them with him being their natural guardian, Baljinder Singh prayed that the custody of the children be given to him.

3. Appellant-Paramjit Kaur contested the petition. She admitted that

she is the legally wedded wife of Baljinder Singh and that Baljinder Singh is father of Sukhbir Singh and Lakhdeep Singh. Explaining the reason for their living separately, she submitted that the behaviour of Baljinder Singh and his family members towards her and her children was very harsh; she had been tolerating cruelties from the very beginning but ultimately on 18.09.2006, she was given severe beatings and was turned out of the matrimonial home in three wearing clothes alongwith the minor children. Thereafter she remained admitted in the hospital for treatment up to 23.09.2006, but her husband-Baljinder Singh never bothered to enquire about her welfare. She then filed a petition under Section 125 of the Code of Criminal Procedure in the Court of Sub Divisional Judicial Magistrate, Samrala. As a counter blast to the same, Baljinder Singh filed the instant petition with a view to avoid payment of maintenance allowance to her.

Resisting the prayer of Baljinder Singh for grant of custody of the children, Paramjit Kaur submitted that he is a greedy person and has no love and affection either for her or the children and that he had been ignoring his responsibilities towards the family and had never bothered to know about their welfare.

4. On the pleadings of the parties following issues were settled by learned trial court:

1. Whether the petitioner is entitled to get the custody of

minor Sukhbir Singh and Lakhdeep Singh from
respondent No.1?OPP

2. Whether petition is not maintainable?OPP
3. Relief.

Both the parties adduced evidence in support of their respective contentions.

5. Learned trial court vide order dated 06.12.2013 allowed the petition directing respondent No.1 Paramjit Kaur to hand over the custody of minors namely Sukhbir Singh and Lakhdeep Singh to petitioner Baljinder Singh.

Feeling aggrieved by the said order Paramjit Kaur along with the two minors has preferred the instant appeal.

6. We have heard Mr. B.P.S. Virk, Advocate representing the appellant and Mr. Jagjit Singh, Advocate appearing on behalf of respondent and with their able assistance, have gone through the material available on record.

7. Admittedly, the minors are in the custody of Paramjit Kaur, their mother, since September, 2006 when according to Paramjit Kaur, she was given severe beatings by her husband(Baljinder Singh) and was turned out of the matrimonial home alongwith the

children. Baljinder Singh did not mention any date or month but alleged that in the year 2007 when he had gone to work, Paramjit Kaur alongwith the children went to her parents taking away ornaments etc. and left his company without any rhyme or reason.

8. It could not be disputed that when Paramjit Kaur stepped into the witness box as RW-1 she deposed that she is not doing any job and also does not own any property; she has no source of income; and her father is also handicapped. On the other hand, Baljinder Singh deposed that he is working on contract basis with U.T. Government at Chandigarh and is getting an amount of Rs.4500/- per month and further that he is able to save Rs.3000/- per month after necessary expenses and has also got Rs.12,000/- 13,000/- in bank account.

Though in his cross-examination Baljinder Singh went on to state that his present salary is Rs.7000/- per month but neither he mentioned his vocation nor he produced any document to prove his employment or earnings. Evidently, if Paramjit Kaur has no independent source of income, Baljinder Singh also does not have a secured job or monthly income.

9. It is important to note that as per order dated 16.12.2014

passed by this Court, on a request made by Paramjit Kaur and the minor children, Baljinder Singh was directed to clear arrears of maintenance allowance @ Rs.1500/- per month awarded to the wife and children under Section 125 Cr.P.C. from 2007 onwards. But admittedly, till date not a penny has been paid to them by Baljinder Singh. The fact is that he has not paid any maintenance allowance since 2007. On 16.12.2014 learned counsel representing Baljinder Singh had undertaken on his behalf that a demand draft of an amount of Rs. 50,000/- on account of part payment of arrears of maintenance allowance will be given to appellants Paramjit Kaur and her children on the next date of hearing. Despite the undertaking given, Baljinder Singh failed to pay any amount to the appellants. It was then submitted that he is not in a position to pay.

10. The intentional refusal on part of Baljinder Singh to pay maintenance allowance to his minor children only shows the extent of love and care he has for them. He is living separate from the children since September, 2006. Not even a word was spelt out by him to plead or prove that ever since the minor children were residing with their mother, he had ever taken any step to know about their welfare or to provide them some money at least for meeting their

daily necessities.

11. Needless to say that the welfare of the minor child and not the rights of the parents is the paramount consideration for the Court while determining the question as to who should be given the custody of the minor. The Court is required to give due weightage to the Child's ordinary contentment, health, education, intellectual development and favourable surroundings besides taking care of his/her physical comforts. In other words, the custody of the minor child is not to be given only because the person claiming the same alleged that he has better finances.

12. In the instant case, Baljinder Singh admitted that when Paramjit Kaur took away the children, his elder son was studying in Class 2nd and the younger was studying in K.G. In his statement recorded on 07.03.2011, he admitted that the elder son is studying in Class 6th and the younger is in Class 5th. Meaning thereby that Paramjit Kaur may or may not be having some permanent source of income, yet she is taking care of the welfare of the children and is providing them education and other basic necessities as per her financial status .

Father Baljinder Singh on his own has taken no pains to

either bring them back to his house or to know about their welfare or provide them some financial help. In such circumstances, the children if detached from the mother, with whom alone they are residing for the last more than eight years would become uncomfortable physically, emotionally and psychologically. Their sentiments will suffer a set back which can adversely affect their growth.

13. As indicated above, even on the direction of the Court, Baljinder Singh had declined to clear the arrears of maintenance allowance to the minor children. Thus, in our considered opinion, the welfare of the children lies in their living with the mother-appellant Paramjit Kaur and it will be too harsh to order their custody to be handed over to the father Baljinder Singh.

14. Resultantly, the order dated 06.12.2013 passed by the learned Additional Civil Judge (Senior Division) Kharar is set aside and allowing the appeal the petition filed by Baljinder Singh is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

07.01.2015
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