

court proceedings and the judgment passed by the competent Court. Therefore, the appellant is permitted to place on record Annexure P2 and P3.

The application is allowed, accordingly.

FAO No. 24 of 2015

1. The 1st respondent Amardeep Kaur, widow of Late Shri Harpreet Singh, filed a petition under Section 25 read with Section 10 of the Guardian and Wards Act claiming custody of minors Tejbir Singh and Jotbir Singh, both aged 5 years being twins. The trial Court allowed the petition and directed the appellants to hand over the custody of the minors to the 1st respondent within two months from the date of the order. The said order passed by the trial Court is under challenge before this Court.

2. The 1st respondent contended in her petition that she was blessed with twins, namely, Tejbir Singh and Jotbir Singh, aged 5 years. Unfortunately, her husband Harpreet Singh died in a road accident that took place on 12.12.2010. Thereafter the relationship between the appellants and the 1st respondent remained strained. She was forced to leave the matrimonial home on 4.5.2011. It is her contention that she being the natural mother is entitled to have the custody of those two children. It is submitted that she is an educated lady, serving as Inspector, Grade-I in Civil Supplies Department, Punjab. She is getting a salary of ₹26,000/- per month. In other words, she has got sufficient source of income to maintain the

minors. Therefore, she claimed custody of the minor children in their best interest.

3. The appellants have contended in their reply that the 1st respondent on account of her duty from 9.00 A.M. to 5.00 P.M. may not be in a position to take care of the needs of the children. The 1st appellant has retired as an Inspector from the Police Department while the 2nd appellant is a home maker. Therefore, they can look after and maintain the children very well. 1st respondent has some medical problem in her brain and as a result of which she is under continuous medical treatment. The minor children are in the custody of the appellants right from their birth. They have sufficient resources to give comforts and education to the children. Therefore, they have prayed for dismissal of the petition filed by the 1st respondent.

4. On the side of the 1st respondent, she was examined as PW1, Dhian Singh, an official hailing from the office of District Controller, Ropar (District Food and Supply) was examined as PW2 and Gurdeep Kaur was examined as PW3. On the side of the appellants, the 1st appellant was examined as RW1 and the 2nd appellant was examined as RW2. Paramjit Singh from the Food and Supplies Office, Roopnagar was examined as RW3.

5. The trial Court having adverted to the oral evidence and the documents exhibited by both the parties came to the conclusion that the 1st respondent is a fit person to have custody of the minor children.

6. It is found that the 1st respondent is the mother of the minor children Tejbir Singh and Jotbir Singh. They being twins were five years old when the petition was filed. There is no dispute to the fact that the minor children who were born on 10.8.2006 were brought up by their father Harpreet Singh and mother Amardeep Kaur till 12.12.2010. After the death of Harpreet Singh in a road accident, the 1st respondent left the matrimonial house on 4.5.2011 on account of some discord with the appellants herein. The present petition under the Guardian and Wards Act claiming custody of the minor children had been filed by the 1st respondent on 17.8.2011 itself. In other words, there was no laxity on the part of the 1st respondent in claiming custody of the children.

7. It is also an admitted fact that 1st respondent is serving as Inspector-Grade-I in Civil Supplies Department, Punjab. She has been drawing a salary of ₹26,000/- per month. She is found to be well educated but on the other hand, the 1st appellant is 70 years old and the 2nd appellant also is found to be a Senior Citizen. Of course, they also have concern for the welfare of the minor children as they are none other than the children of their son who unfortunately passed away in the accident.

8. It is the duty of the Court to entrust custody of the minor children, keeping in mind the welfare of the children. The 1st respondent is just 35 years old. She is also the natural guardian of the minor children. There is nothing on record to assail her physical

fitness. Her financial condition also is very sound. There is no reason to conclude that she would act against the welfare of her minor children who had lost their father in an accident. Therefore, in our view, there is nothing to deny custody sought for by the appellants.

9. The appellants who are aged people might have showered love and affection on their twin grand children left behind by their son who died in a motor accident. But on a comparative analysis of the merit of rival claim for custody of the minor children, we are of the firm view that the 1st respondent who is the natural guardian is found to be the fittest person to have custody of the minor children.

10. The learned counsel appearing for the appellants would submit that the trial Court failed to assess the preference of the minor children before passing the impugned judgment.

11. The admitted fact is that the children have been growing throughout only in the house of the appellants. It appears that the husband of the 1st respondent remained with his wife, the 1st respondent herein, in the very same house and lived her marital life till he passed away in a motor accident. After the 1st respondent left the matrimonial house on 4.5.2011, the children have been in the custody of the appellants herein. Therefore, the children at the tender age of five may prefer their grand parents for their upbringing. The choice of the children who are at a tender age cannot at all be taken as a determining factor to decide the custody. As already

observed it is only the welfare of the children that is paramount to decide their custody. Therefore, failure on the part of the trial Court to elicit the option of the children does not loom large.

12. Learned counsel appearing for the appellant would submit that sudden shift of the minor children from the house of the appellants would adversely affect the physical and mental health of the children.

13. We find that the 1st respondent had been residing in the very same house where the children were brought up until three months prior to the filing of the petition. The 1st respondent also has been meeting the children off and on. Under such circumstances, in our view, shifting the children from the custody of the appellants to the custody of the 1st respondent would in no way affect their health. In fact, it is brought to our notice that school of the children is located within about 50 mts. from the house of 1st respondent, whereas the house of the appellants is located about 4 Kms. away from the school. The children would definitely love to go to school which is located in the close vicinity of their house.

14. It is submitted that there is no male member with the 1st respondent. There is also no one to take care of the children between 9.00 A.M. And 5.00 P.M., when the 1st respondent is away to discharge her duty as a government servant.

15. Such a submission does not appeal to us at all. There are single parents who bring up their children commendably. The 1st

respondent would definitely use her robust common sense and make suitable arrangement for taking care of her children in her absence during day time. But a mother cannot sacrifice her job, more especially in the absence of her husband, just to take care of her children throughout the day. There are lot of attractive alternative facilities available in the present scenario to take care of the children of the employed mothers. Therefore, in our considered view, there may not be any difficulty for the 1st respondent to make alternative arrangement to take care of her children in her absence during day time.

16. It is submitted that nothing has been invested in the name of the children by the 1st respondent. We find that such a submission is factually wrong. A major portion of the share the 1st respondent received on the demise of her husband in the motor accident has been pumped in for investing in fixed deposit in the Insurance Company. Even assuming that she had not invested in the name of the children, she has got enough time in her long length of service to make financial provisions for her children.

17. Learned counsel appearing for the 1st respondent vehemently attacked the deficiency in moral value of the 1st appellant, inasmuch as he was involved in a bribery case. It was repelled by counsel appearing for the appellants contending that the bribery case launched as against the 1st appellant ended in acquittal.

18. The judgment passed by the trial Court in corruption case

was placed on record. We find that the trial Court has observed at one place in the judgment that the prosecution failed to establish the charge of bribery as against the 1st appellant. In yet another place, the trial Court observed that the 1st appellant deserves acquittal, availing the benefit of doubt.

19. At any rate, in our considered view, the 1st appellant had faced a bribery case under the Prevention of Corruption Act. Even if the case ended in acquittal, it may not be conducive for the children to build a robust moral value if they are permitted to stay in the house of the appellants.

20. Of course, counsel appearing for the respondent attacked the morality of 1st appellant, alleging that he had chosen to receive a cheque for a sum of ₹11 lacs from the 1st respondent on the understanding that he would invest the same in the name of the minor children, but he had chosen to invest in his own name. It was also alleged that he bequeathed a property in the favour of minor children and, thereafter, he chose to alienate the said property to a 3rd party. We are not inclined to go deep into such allegation and the counter allegation of the parties, as the scope of the present petition is very limited.

21. In the above facts and circumstances, we are of the considered view that the 1st respondent who has got wherewithal to educate the minor children, showering love and affection on them, would be the best choice to send the children in her custody.

22. The counsel for the 1st respondent, on instructions from the respondent submitted that the respondent undertakes to give access to the appellants to exercise their visitation rights and interact with the children at any point of time in her house.

23. In view of the above, we find that there is no merit in the appeal and, therefore, the judgment of trial Court is confirmed. The appellants are directed to hand over the custody of the children to the 1st respondent within 15 days from the date of this order. The 1st respondent shall give access to the appellants, who are the grand parents of the minor children to exercise their visitation rights and interact with the children, at any point of time at her residence. The appeal stands dismissed with the above observations.

**(M. JEYAPPAUL)
JUDGE**

**(RAJ RAHUL GARG)
JUDGE**

May 14, 2015
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