

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4153 of 2014

Date of Decision: 12.1.2015

Atma Ram

....Appellant.

Versus

Poornima Kaur

...Respondent.

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

PRESENT: Mr. N.K. Manchanda, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the appellant-husband against the judgment dated 20.9.2013 passed by the Guardian Judge, Ferozepur, whereby the petition filed by him under Section 7 read with Section 25 of the Guardian and Wards Act, 1890 (in short "the Act") for appointment as guardian of the person and property of Miss Amanpreet Kaur minor daughter of Nanak Chand and the respondent regarding agricultural land falling to her share as detailed in the head note of the petition, was dismissed.

2. Put shortly, the facts of the instant case are that Nanak Chand was the real brother of the appellant. The respondent contracted marriage with Nanak Chand for the second time and out of their wedlock, Amanpreet Kaur was born. Said Nanak Chand had expired and mutation of inheritance of Nanak Chand bearing No. 1017 had been

sanctioned in the name of Amanpreet Kaur minor as referred in the jamabandi for the year 2008-09 regarding the land as mentioned in the head note of the petition. The minor is residing with the respondent. The appellant is the real uncle of the minor. The respondent was resident of Silliguri and previously she was residing with Satnam Chand son of Karam Chand, resident of village Turkan, Tehsil Fazilka. Out of their wedlock, the respondent was having two daughters. Thereafter, she started living with Nanak Chand, since deceased. Said Nanak Chand during his life time transferred one acre of land in favour of the respondent which she had sold. The respondent had contracted a Kareva marriage with one Kanwal Karki, resident of village Mehma. Said Kanwal Karki was a person of bad repute and, therefore, the future of the minor was very dark. She was not being provided proper education, clothings etc. The respondent and said Kanwal Karki wanted to dispose of the share of the minor in the land. The appellant was in a position to give better education and better future to the minor. Accordingly, he filed a petition under Section 7 read with Section 25 of the Act for appointing guardian of the person and property of minor Amanpreet Kaur. The said petition was contested by the respondent by filing a written statement. Besides raising various preliminary objections, it was pleaded that she is the real mother of the minor and the minor was residing with her. When the natural mother of the minor is alive, no other person can be appointed as guardian of the minor. It was further pleaded that Nanak Chand during his life time, transferred one acre of his land in the name of the respondent and executed a registered Will dated 22.5.1999 vide which he gave the other land to his daughter Amanpreet Kaur and after his death, the mutation of inheritance was

sanctioned in favour of said Amanpreet Kaur. On coming to know about the fact of execution of registered Will in favour of Amanpreet Kaur, the appellant by misrepresentation and fraudulently got the land sold situated at village Gulam Rasool, just 14 days prior to the death of Nanak Chand, whereas in those days, Nanak Chand was not in his sound disposing mind. After the death of Nanak Chand, the appellant turned out the respondent and her minor daughter from their house. According to the respondent, she had sold her agricultural land and got deposited the sale price in the bank and the land belonging to the minor had been given on lease and the lease money was being utilized for giving good education to the minor as she was studying in 1st class at Gursikh Academy Bahadurgarh, Patiala. The other averments made in the petition were denied and a prayer for dismissal of the same was made. The averments made in the written statement were controverted by filing a rejoinder by the appellant. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the applicant is entitled to be appointed as Guardian of the property of minor Amanpreet Kaur? OPA
2. Whether the application is not maintainable? OPR
3. Whether the application is false, frivolous and vexatious to the knowledge of the applicant? OPR
4. Whether the applicant has concealed material facts from the court? OPR
5. Relief.

3. In support of his case, the appellant examined AW1 Gurcharanjit Singh and AW3 Joginder Singh Advocate besides examining himself as AW2. AW1 and AW2 deposed by way of their respective affidavits Ex.AW1/A and Ex.AW2/A. He also proved on record copy of the application as Ex.A1, inquiry report Ex.A2 and jamabandi for the year 2008-09 as Ex.A3. On the other hand, the respondent examined SI Gurdeep Singh as RW1, Amanpreet Kaur teacher of Gursikh Academy as RW2, Prem Kumar HC as RW3, Harbhajan Lal Registration Clerk as RW4, Manohar Lal, Registration Clerk as RW5, Bagicha Singh as RW6 and herself appeared as RW7. She also produced in evidence various documents Ex.R1 to Ex.R10 and her statement recorded in the court as Mark A.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 against the appellant holding that it would be for the welfare of the minor if she remained in the custody of her mother, natural guardian and no case for appointing the appellant as guardian of the person and property of the minor was made out. Issue No.2 was decided against the respondent whereas issue No.3 was decided in favour of the respondent. Issue No.4 was decided in favour of the respondent holding that the appellant had concealed the material facts from this court. Accordingly, the trial court vide judgment dated 20.9.2013 dismissed the petition. Hence, the present appeal.

4. Learned counsel for the appellant submitted that the respondent was a lady of bad repute and was living with one Kanwal Karki, a person of bad reputation with whom she had contracted marriage. Learned counsel further submitted that the respondent in connivance with Kanwal Karki tried to dispose of the share of the minor

in the land. It was next submitted that the trial court had wrongly disbelieved the evidence produced by the appellant and had wrongly believed the story put forward by the respondent.

5. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

6. As per documents Ex.R1 to Ex.R3, the respondent was turned out from the house. There was litigation pending between the parties regarding the land and some sale deed executed by the appellant was under challenge. No evidence was produced by the appellant to show that the respondent was of bad repute. The minor was admitted in a boarding school where the fees was being paid by the respondent from the income of the land in her possession being natural guardian. Further, the respondent was doing the manual work for supporting the family and had been paying ₹ 40,000/- yearly as tuition fee of the minor. The welfare of the minor girl would be with her mother. The relevant findings recorded by the trial court read thus:-

“12. While on the other hand, the respondent has proved on file Ex.R1 to R3, the documents regarding the proceedings conducted by the police, with regard to dispute between the parties, from which it is made out that the respondent was turned out of the house. As per Ex.R4, the inquiry report, it has been ordered to present police report against the applicant. Ex.R5 is the application form for admission of the minor in Gursikh Academy school and Hostel. Ex.R6, R7 & R8 and the receipts of payment of fee to the extent of Rs.25000/- each. Ex.R10 is the copy of admission register of the minor. Ex.R11 is the copy of FIR got registered by the respondent against applicant.

13. From these factual circumstances, it is held that

there is a litigation pending between the parties regarding the land and this fact has been admitted by the applicant himself. Some sale deed executed by the applicant has been challenged and there is no evidence to the probability that the respondent is of bad repute, rather she has sent the minor to a boarding school and is paying her fee from the income of land in her possession, being natural guardian. The credibility of the respondent, who reiterated her case on oath by stepping into witness box as RW7, has not been shaken. She herself is doing the manual work for supporting the family and she has been paying Rs.40,000/- yearly as tuition fee of the minor. In these factual circumstances, it appears that it is for the welfare of the minor if she remained in the custody of her mother, natural guardian. While the applicant has litigation pending with her family. Therefore, the case for appointing the applicant as guardian of the person and property of the minor is not made out.”

7. In view of the above, no illegality or perversity could be found in the findings recorded by the trial court. Accordingly, the judgment dated 20.9.2013 passed by the trial court is upheld and the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 12, 2015
gbs

(SNEH PRASHAR)
JUDGE