

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4695 of 2014

Date of Decision: 8.1.2015

Jagraj Singh

....Appellant.

Versus

Pritam Singh and another

...Respondents.

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

PRESENT: Mr. Baltej Singh Sidhu, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Having remained unsuccessful before the Civil Judge (Senior Division), Faridkot in a petition filed under Section 7 read with Section 25 of the Guardian & Wards Act, 1890 (in short “the Act”) for the appointment of appellant as guardian of minors Arashdeep Kaur (daughter) and Surinder Singh (son) and for restoration of their custody to him, the appellant has approached this Court by way of instant appeal challenging the judgment dated 6.2.2014.

2. A few facts relevant for adjudication of the instant appeal as narrated therein may be noticed. The appellant is father of the minors, namely, Arashdeep Kaur (daughter) born on 17.9.1999 and Surinder Singh (son) born on 23.3.2001. The respondents are the maternal grand parents of the minors. The appellant filed a petition for custody of the minors and the same was allowed by the Civil Judge (Senior Division), Muktsar against which the respondents filed appeal and this Court vide

order dated 2.2.2009 allowed the appeal on the point of jurisdiction only. However, the appellant was granted permission to file the petition before the court having the jurisdiction to try the same. The appellant is working as Peon and also owns 15 marla pucca house in village Udekarn. The wife of the appellant, namely, Jaswant Kaur alias Mohan Kaur had gone to her parents 15 days before the delivery of minor Surinder Singh along with all jewellery and valuable articles. After delivery of Surinder Singh, she had died. According to the appellant, the respondents are aged about 83 years and were even unable to maintain and look after themselves. Both the respondents have poor health, own no property, illiterate and not able to earn anything and have no source of income and as such they could not bring up and educate the minors properly. The appellant requested the respondents so many times to deliver back the custody of the minors but to no avail. Accordingly, the appellant filed a petition under Section 7 read with Section 25 of the Act for custody of the minors. Upon notice, the respondents did not appear and were proceeded against *exparte* vide order dated 9.10.2009. However, on 12.1.2010, respondent No.1 appeared and filed an application for setting aside the *exparte* order dated 9.10.2009 which was allowed in view of no objection given by the counsel for the appellant. Thereafter, respondent No.1 filed a written statement raising various preliminary objections. It was pleaded that the appellant had no love and affection towards the minors and in fact was puppet in the hands of his sister-in-law (Bhabhi) and acted as per her wishes. It was further pleaded that since the day he started earning, he spent most of his earnings on and as per the wishes of his sister-in-law and always ignored the minors and their mother and that it was extreme on the part

of the appellant when on 21.9.2001, he procured an adoption deed at the instance of his sister-in-law showing that he had adopted a child (son of his sister-in-law) and showed that the adoption was made earlier. The said adoption deed was made knowing fully well that he was not competent to adopt the child as he was already having one male and female child. According to respondent No.1, the said adoption deed had not been executed only for the purpose of adoption, rather it had been written in the shape of gift deed/will and it had been got written that the adopted child would be entitled to whole of his property if he dies while in service. It was further pleaded that earlier also the appellant had tried to take forcible custody of the minors for which a criminal complaint was pending against him. The appellant never paid maintenance under Section 125 of the Code of Criminal Procedure inspite of the passing of the order by the court and he is in arrears of ₹ 1,50,000/-. On merits, the averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether petitioner is entitled to be appointed as guardian of minors Arshdeep Kaur and Surinder Singh? OPA
2. Whether petitioner is entitled for custody of minors? OPA
3. Whether petition is not maintainable in the present form? OPR
4. Relief.

3. In support of his case, the appellant besides examining himself as AW1, also examined Guranditta Singh as AW2 and Paramjit

Singh as AW3 (wrongly numbered as AW2 again) whereas on the other hand, respondent No.1 examined himself as RW1.

4. The trial court took issues No.1 and 2 together being interconnected and on appreciation of evidence led by the parties decided the same against the appellant holding that the appellant was not at all entitled to be appointed as guardian of the minors Arshdeep Kaur and Surinder Singh and as such was not entitled to their custody. Issue No.3 was decided in favour of the respondents holding that the petition was not maintainable in the present form. Accordingly, the trial court vide judgment dated 6.2.2014 dismissed the petition. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the appellant being father of the minors had every right to claim their custody and was entitled to be appointed as their guardian. Learned counsel further submitted that the appellant was having sound financial background and he could provide better future to the minors.

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

7. The Apex Court in **Gaytri Bajaj v. Jiten Bhalla 2012(4) RCR (Civil) 603** discussing the issue relating to custody of minor child had held as under:-

“14. From the above it follows that an order of custody of minor children either under the provisions of The Guardians and Wards Act, 1890 or Hindu Minority and Guardianship Act, 1956 is required to be made by the Court treating the interest and welfare of the minor to be of paramount importance. It is not the

better right of the either parent that would require adjudication while deciding their entitlement to custody. The desire of the child coupled with the availability of a conducive and appropriate environment for proper upbringing together with the ability and means of the concerned parent to take care of the child are some of the relevant factors that have to be taken into account by the Court while deciding the issue of custody of a minor. What must be emphasized is that while all other factors are undoubtedly relevant, it is the desire, interest and welfare of the minor which is the crucial and ultimate consideration that must guide the determination required to be made by the Court.”

8. The trial court on appreciation of evidence led by the parties held that the appellant was a puppet in the hands of his sister-in-law and had adopted her son on her desire and to please her. He had not only adopted Rajinder Singh (son of his sister-in-law) but had disinherited both minors Arshdeep Kaur and Surinder Singh. According to the adoption deed, Rajinder Singh had become his adopted son w.e.f. 21.9.2001 and he would inherit his entire property. The trial court concluded that it would not be safe to entrust the custody of the minors to the appellant and there would be a big risk to their lives at the hands of his adopted son Rajinder Singh. It was recorded by the trial court that although the respondents had not been able to prove their particular source of income but the minors were living with the respondents and were being brought up by them and at present the minor Arshdeep Kaur

was studying in 9th standard and minor Surinder Singh was also studying in the school and this fact was sufficient to prove that the respondents were taking good care of them and were also providing them all the basic facilities of life. Keeping in view the facts and circumstances of the case, the trial court held that the appellant was not entitled to be appointed as guardian of minors Arshdeep Kaur and Surinder Singh and as such was not entitled to their custody.

9. In view of the above, when the learned counsel for the appellant has not been able to dispel the findings recorded by the trial court arrived at on appreciation of evidence produced on record, we find no justification to interfere in the judgment of the trial court dated 6.2.2014.

10. In view of the above and the findings recorded by the trial court, no ground is made out for declaring the appellant to be the guardian of the minors and also in handing over the custody of the minors to him. Accordingly, the impugned judgment dated 6.2.2014 passed by the trial court is upheld and the appeal being devoid of any merit is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 8, 2015
gbs

(SNEH PRASHAR)
JUDGE