

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

-.-

FAO 5439 of 2015
Date of decision: 03.11.2015

Suba

..... Appellant

Versus

Salita Devi

.....Respondent

**Coram: Hon'ble Mr. Justice Rajive Bhalla
Hon'ble Mrs. Justice Rekha Mittal**

-.-

Present: Mr. Ramesh Sharma, Advocate
for the appellant

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against the judgment dated 16.03.2015 passed by the Civil Judge (Senior Division) Kaithal, dismissing the petition under Section 25 of the Guardian and Wards Act, 1890 filed by the appellant-father seeking custody of the minor - Seema (daughter of the parties).

The facts, in brief, are that marriage of the parties was solemnized in the year 1996 and out of the wedlock, minor Seema was born. After marriage, the respondent-wife left the matrimonial house without any rhyme and reason, filed an application under Section 125 of the Code of

Criminal Procedure, got registered a criminal case for an offence punishable under Sections 406 and 498-A of Indian Penal Code. After getting a decree of divorce from the Court, the respondent got remarried to Suraj Bhan son of Ram Kishan and took the minor daughter along with her. The respondent is not looking after the child properly. The appellant is the natural guardian of the minor and is the best person to look after her and provide for her needs and comforts.

The respondent – mother filed the reply, denied the allegations raised in the petition with further averred that the appellant is a drunkard, unsocial and cruel person. He used to give beatings to the respondent after consuming liquor. He does not possess resources to provide for education, clothing, medicines and other necessities of the child. It is averred that as the appellant failed to pay the maintenance during pendency of proceedings under Section 13 of the Hindu Marriage Act, his defence was struck off and a decree of divorce was passed against him. The respondent and her husband are taking proper care of the minor. She is in a position to maintain the minor in the best possible manner.

The controversy between the parties led to framing of following issues:

- 1) whether the petitioner is entitled for the custody of minor child daughter Seema?OPP*
- 2) whether the petition is not maintainable?OPR.*
- 3) Relief.*

The learned trial Court permitted the parties to lead evidence in support of their respective contentions. The appellant stepped into the witness box and reiterated his averments set up in the petition. On the other

hand, the respondent examined herself, Rati Ram (RW2) and Surajbhan (RW3).

The learned trial Court, on a due consideration of the pleadings of the parties, evidence adduced by them in support of their respective contentions, came to hold in favour of the respondent that the welfare and future of the child will be safe, if her custody remains with the respondent. However, the appellant has been granted visitation rights to meet the minor child.

Feeling aggrieved against the judgment passed by the trial Court, the present appeal has been preferred by the appellant-father of the minor child.

Counsel for the appellant would submit that the learned trial Court committed a gross error by ignoring a vital fact that as the respondent-mother has performed second marriage and is living with her husband, the female child would be compelled to stay with a stranger. It is further argued that the appellant has a preferential claim to have custody of his daughter vis-a-vis the respondent.

We have heard counsel for the appellant, perused the records and find no merit in the appeal.

The learned Court, on a detailed consideration of the facts and circumstances, relevant in the context has arrived at a conclusion that the welfare of the child lies in her custody with the mother. Counsel for the appellant is not in a position to point out if the Court below had either attached importance to an irrelevant consideration or ignored the relevant one. Similarly, counsel has not challenged correctness of factual findings,

recorded by the trial Court. We do not find any error much less illegality in the well founded findings as would call for intervention.

Finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rajive Bhalla)
Judge

(Rekha Mittal)
Judge

03.11.2015
Mohan Bimbora