

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

36 FIRST APPEAL NO. 3273 OF 2015

MADHAV POSHATTI BARDEWAD
VERSUS
GANPATI GANGARAM KANEWAD

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Advocate for Appellant : Mr. Shinde Ganesh P. And
Mr. Abhay Ostwal

Advocate for Respondent sole : Mr. Vijay Deshmukh h/for
Mr. Gajanan G. Kadam

CORAM : V. K. JADHAV, J.

DATE : 21st March, 2016

PER COURT :

1. As per order dated 11.01.2016, heard finally at admission stage.

2. Being aggrieved by the judgment and order passed by the learned District Judge No.1 Bhokar dated 30.09.2011 in Misc. (RJE) No. 8/2010, the appellant/original applicant has preferred this appeal.

3. Brief facts giving rise to the present appeal are as follows:

i. The appellant was married with one Sunita, daughter of the present respondent on 23.05.1998 at Nagapur Tq. Bhokar Dist. Nanded. A girl child Kum. Mangal was born to them. She was 7/9 years old at the time of filing of the application under appeal.

ii. On account of accidental death of Sunita in the year 2007, brother of deceased Sunita lodged complaint against the present appellant and his family members. On the basis of said complaint, crime was registered and accordingly, the present appellant came to be arrested by Police. Meanwhile, the present respondent, who is grandfather from maternal side of minor daughter Kum. Mangal, took her to his village Batala and since then, Kum.Mangal is residing with him. Consequently, the appellant has filed application before the learned District Judge, Bhokar, Dist. Nanded under Section 25 of the Guardian and Wards Act, 1890 claiming custody of his daughter Kum. Mangal. The learned District Judge Bhokar, by the impugned order dated 30.09.2011, dismissed the said application. Hence this appeal.

4. Learned counsel for the appellant submits that the respondent is not taking proper care of Kum. Mangal, minor daughter of appellant and is not providing education to her. The learned counsel submits that the appellant, being father, is natural guardian and thus, entitled for the custody of his minor daughter Kum. Mangal. The learned counsel submits that it is only when the natural guardian is found to be unfit or his interest is contrary to the interest of minor or in a

very exceptional circumstances, the person other than natural guardian is appointed as guardian for the person of minor. The learned counsel submits that the appellant has sufficient means to take care of his daughter. The learned counsel submits that the learned District Judge has erroneously rejected the application. The learned counsel submits the respondent is also claiming maintenance for Kum. Mangal by initiating appropriate proceedings against the appellant.

5. I have also heard the learned counsel for the respondent.

6. The appellant was prosecuted under Section 498A, 306 r/w section 34 of the Indian Penal Code on account of death of his wife Sunita. At the time of death of his wife Sunita, Kum. Mangal was about three years old and nobody was there to look after her as the appellant and his family members were arrested by the police. It is said that the appellant is now acquitted by the court for the said charges levelled against him by filing charge-sheet.

7. The learned District Judge, in para 8 of the Judgment, has observed that during the pendency of the proceedings, the appellant remarried with Mahananda and

she is residing with him. The learned counsel for the appellant vehemently submitted that Kum. Mangal is not taking education right now and the respondent is not taking proper care of her. On careful perusal of the record and proceedings, I find that Kum. Mangal came to be examined as witness for the respondent before the District Judge. She has deposed that she is studying in third standard in Z.P. Primary School at Batala. She has given details of her subjects and even she has mentioned name of her teacher. She has further deposed that her maternal grandfather i.e. respondent herein is maintaining her and incurring expenses on her education. She has further clarified that she wants to reside with her grandfather/respondent and she does not want to reside with her father as her father has killed her mother.

8. It thus appears that Kum. Mangal is taking education and she is carrying impression that the appellant has killed her mother. It also appears from the record that the respondent is taking care of Kum. Mangal and even incurring expenses on her education. In a custody matter of minor child, welfare of such child is a paramount consideration. It appears that the learned District Judge has considered the same and accordingly

rejected the application. I find no substance in the appeal and there is no merit in the appeal. Hence following order:

O R D E R

- i. Appeal is hereby dismissed.
- ii. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

JPC