

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-2592-2016 (O&M)

Date of Decision: 18.5.2017

Chand Singh

....Appellant.

Versus

Amrit Pal Kaur and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Mr. Jaswinder Singh Grewal, Advocate for the appellant.

Mr. Priyanshu Kamra, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. Delay in refiling and filing of the appeal is condoned.
2. Having remained unsuccessful before the trial court in a petition under Section 25 of the Guardian and Wards Act, 1890 (in short “the Act”) for the custody of minor child, namely, Ravneet Kaur, the appellant-husband has approached this Court by way of instant appeal challenging the judgment dated 23.2.2015 passed by the Additional Civil Judge (Senior Division), Abohar (exercising the powers of Guardian Judge under the Guardian and Wards Act).
3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage of the appellant with respondent No.1 was solemnized in January, 1999 and out of the said wedlock, a female child, namely, Ravneet Kaur was born on 4.2.2003.

After few months of the marriage, the relations between the appellant and respondent No.1 became strained. Respondent No.1 moved a complaint to the Women Cell, Ferozepur against the appellant and his parents and a compromise was effected between the parties with the intervention of Panchayat on 21.11.2003. On the basis thereof, the appellant and respondent No.1 took a panchayati divorce. Respondent No.1 was not providing proper education to minor Ravneet Kaur. She was not giving proper care to the minor and her career and future was in dark. The marriage between the appellant and respondent No.1 was dissolved by the Court on 21.7.2010 and thereafter she remarried and the minor was living with respondents No.2 and 3 (parents of respondent No.1). They were not taking care of her and further schooling and career of the minor was unsafe. Accordingly, the appellant filed a petition under Section 25 of the Act for the custody of the minor female child. The said petition was contested by the respondents by filing the written statement. Various preliminary objections were raised therein. The other 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 the petitioner is entitled to custody of her minor daughter, namely, Ravneet Kaur, as prayed for? OPA
2. Whether the petitioner has not approached the Court with clean hands? OPR
3. Relief.
4. The trial court after hearing the arguments dismissed the petition vide judgment dated 23.2.2015 holding that the appellant had failed

to lead an iota of evidence. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the appellant being the father of the minor had every right to claim the custody of the minor.

6. On the other hand, learned counsel for the respondents supported the judgment passed by the trial Court and submitted that the trial Court had rightly declined the custody of the minor to the appellant.

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

8. 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.”

9. The courts while adjudicating the issue of custody of minor has to ensure that the interest and welfare of the minor is of paramount importance. While deciding the issue of custody of minor, the better rights of either parent would not be of great significance. The factors to be borne in mind by the Court while allowing custody to a parent is to see the desire of the child along with the availability of a conducive and appropriate environment for proper upbringing and further the ability and means of the concerned parent to take care of the child. In other words, no doubt, all other factors cannot be said to be irrelevant but 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.

10. Undisputedly, the father of the minors is the natural guardian, though custody of a minor who has not completed the age of five years shall ordinarily be with the mother, and has the right of custody unless the Court comes to the conclusion that the father is unfit to have the custody and that it is not for the welfare of the minor that the father should be allowed to exercise his right. Guardianship is in the nature of a sacred trust. In the present case, the appellant had not produced any evidence to show that the daughter was not happy in the company of her mother-respondent No.1 or her parents. She appeared to be in a position to look after the daughter and provide with adequate educational facilities and also to maintain her in a

proper and congenial manner. Further, the child being a daughter, her wish was of paramount consideration and she was already living with respondent No.1 and her parents, thus, there was no occasion to displace her residence by giving custody to the father. Moreover, the girl child is now more than 14 years of age and her interest would be better served by allowing her to remain in the custody of respondent No.1 and her parents. The appellant had miserably failed to prove that welfare of the daughter would be better served if the custody is granted to him. Thus, keeping in view the facts and circumstances of the case, it would not be in the interest of the daughter to dislodge her from her natural mother-respondent No.1 and maternal parents when there were no specific reasons or evidence produced on behalf of the appellant to do so.

11. In view of the above and the findings recorded by the trial court, no ground is made out for handing over the custody of the minor to the appellant. Accordingly, the appeal being devoid of any merit, is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 18, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes