

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 226 of 2018

Tiharu Ram Suryavanshi S/o. Jivarakhan Suryavanshi, aged about 55 years, R/o. Pedarwa, Police Station Ratanpur, Tahsil and District Bilaspur (C.G.)

---- Appellant

Versus

Smt. Rajni Bai Suryavanshi W/o. Late Dinesh Kumar Suryavanshi, aged about 26 years, R/o. Village Ramtala, Police Station Koni, Tahsil and District Bilaspur (C.G.)

---- Respondent

For the Appellant :- Mr. Ajay Chandra, Advocate

For the Respondent :- None

Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By
Prashant Kumar Mishra, J.

04.10.2018

1. This is an appeal against the order passed by the Family Court under sections 7 and 10 of the Guardian and Wards Act, 1890, directing the appellant to handover the custody of minor Annu @ Annurag, aged about 5 years to the respondent.

2. There appears no dispute that the respondent wife had earlier married with a person of village Mendra, Tehsil Takhatpur District Bilaspur, from whom she has a daughter. However, after customary divorce she married with the appellant's son Dinesh Kumar in Chudi

form and after death of Dinesh Kumar in a road accident, she has performed another marriage with one Satish Suryavanshi. It is also not in dispute that a sum of Rs. 2,00,000/- had been deposited by way of fixed deposit in the name of minor Annu @ Annurag, as a part of compensation upon death of Dinesh Kumar.

3. Soon after the death of Dinesh Kumar i.e. father of minor Annu @ Annurag the respondent allegedly executed a private agreement that the son would remain in the custody of the present appellant who happens to be his grandfather. However, later on, she has moved the present application for custody of minor Annu @ Annurag.

4. The trial Court having found that the respondent is not allowing her to meet her minor son and that she being the natural guardian is entitled to have custody, is allowed the application.

5. In the matter of **Roxann Sharma v. Arun Sharma, (2015) 8 SCC 318**, the Supreme Court has laid down the principle governing issue of custody and guardianship. Similarly, in the matter of **Purvi Mukesh Gada v. Mukesh Popatlal Gada and Another (2017) 8 SCC 819**, the Supreme Court has held that while deciding the issue regarding custody of minor Court should keep in mind the paramount interest of the minor.

6. In paragraph-22 of the impugned judgment, learned Family Court has referred to the appellant's admission that he is earning only Rs. 400-500 per month, therefore, he does not have means to maintain the minor son. We are satisfied that only on this ground the appeal deserves to be dismissed.

7. The appellant is in financial stress to maintain his own family members, therefore, it is difficult to expect from him to maintain minor Annu @ Annurag. Therefore, the Family Court has not committed any illegality in handing over the custody of the minor son Annu @ Annurag to his mother who is presently residing with her husband Satish Suryavanshi. There is no substance in the appeal which fails and is hereby dismissed.

Sd/-

**Judge
Prashant Kumar Mishra**

Sd/-

**Judge
Vimla Singh Kapoor**