

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No.20 of 2019**

Dhanna Ram S/o Shri Rang Roop Aged About 58 Years Caste - Gond,
R/o Village - Salhi, Post Podi, Bachra, Police Station And Tahsil -
Khadgawan, District - Korea Chhattisgarh ---- **Appellant**

Versus

Mamta Singh D/o Shri Udal Singh Wd/o Late Padumnath Singh, Caste -
Gond, Aged About 27 Years, R/o Village - Salhi, Post Podi, Bachra, Police
Station And Tahsil - Khadgawan, District - Koriya Chhattisgarh., Presently
Resided At - Prema Bag, Police Station And Tahsil - Baikunthpur, District -
Koriya Chhattisgarh. ---- **Respondent**

For Appellant	:	Ms. Richa Dwivedi, Advocate
For respondent	:	Mr. Kaushal Yadav, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****27/08/2019**

Heard.

1. This appeal is directed against order dated 22.12.2018 passed by the Family Court, Baikunthpur, District Korea, by which, an application for grant of custody of a minor child Abhinav Singh, aged about 3½ years has been granted to the respondent-mother.

2. The respondent moved an application under Section 8 of the Guardians and Wards Act, 1890 seeking custody of her minor son, aged about 3½ years namely Abhinav Singh on the pleadings that Abhinav Singh was born out of her wedlock with Padumnath in the year 2009. On 22.06.2015, Padumnath died unfortunate death in a road accident. The respondent was appointed as Secretary of Gram Panchayat. The elder son Ayush Singh under family arrangement is residing with maternal grandfather Udal Singh. The respondent-mother sought custody of the child submitting that the child is too young, aged about 3½ years and she being financially competent, the interest of the child lies

in child residing with his mother. After death of her husband, she is having strained relation with her in-laws and she has been unceremoniously shunted out of the matrimonial house on 28.03.2018 and the minor son is kept away from the affection and care of the mother. She being the natural guardian of the child, is entitled to custody.

3. The application for custody of the child was replied mainly on the ground that the respondent developed illicit relation with a person named Aurangzeb and there are allegations of she maintaining illicit relation after getting herself converted into another religion. Therefore, she no longer continuous to be the natural guardian of the child. The respondent has misused the financial benefit which she received after death of her husband, she is not inclined to take care of the child as she is residing with another person.

4. After allowing the parties to lead oral and documentary evidence, learned Family Court passed an order to the effect that looking to the tender age of the child, the mother is not only the natural guardian but in the circumstances of the case and the evidence on record, the welfare of the child lies in giving custody of the child to the mother. It is this order which is under challenge.

5. Learned counsel for the appellant raised specific ground to the effect that from the oral and documentary evidence which has come on record, it is clear that after death of her husband, the respondent is living in illicit relationship with one Aurangzeb. It is argued that, though, the respondent denied this relationship in her evidence before the Family Court, the appellant produced her former statement made before the Magistrate, wherein, she admitted having married Aurangzeb and residing with him. It is submitted that in this state of affair, when the respondent is leading unchaste life, it will not be proper to allow her custody of the minor child because physical and mental development of the child may be adversely affected in such an atmosphere where the respondent, herself, is of loose character. Next submission is that as compared to the respondent, the appellant is far more financially competent to take care of the child and the child is being brought up in the congenial family atmosphere where the aunt of the child is taking care of the minor child along with his own children.

6. On the other hand, learned counsel for the respondent would submit that

the allegations against the character of the respondent are not made out from the evidence led by the appellant because even if it is accepted that the respondent had contracted marriage with one Aurangzeb, no exception to the same could be taken. He would argue that even if the case of the appellant is accepted that the respondent had contracted intercaste marriage, that by itself, does not cast a stigma on her character. He would argue that the respondent was left in the lurch by in-laws after death of her husband and if in these circumstances, if she may have married with another person, it cannot be said to be an act of unchastity.

7. We have heard learned counsel for the parties and perused the records.

8. Admittedly, the respondent is the natural guardian of the child in view of provision contained in Section 8 of the Guardians and Wards Act. The child, at the time of filing application, was hardly 3½ years old. The financial capacity of the respondent to maintain her child cannot be doubted because there is overwhelming evidence on record to show that after death of her husband, she was provided employment as Secretary in a Gram Panchayat. There does not appear to be any other liability on the respondent so as to say that she would be facing financial stress to maintain her son.

9. The main ground of defence on the part of the appellant to oppose mother's prayer for grant of custody of the child is that she is a lady of easy virtue. This submission cannot be accepted in the light of the evidence on record. The document Ex.D/1 filed by the appellant before the Court below, at the most, shows that the respondent had later on, developed her affair with another person and contracted marriage. It is not a case that the respondent is living in any illicit relationship. We find that there is evidence on record to show that later on, some kind of dispute also arose and the respondent is now not interested in residing with that person. However, all these circumstances, do not cast any stigma on respondent's character. Contracting marriage or even going for intercaste marriage, cannot be said to be an act of unchastity. It is the respondent's choice, whomsoever, she wants to marry. She is a widow and in the circumstances, when she has been unceremoniously shunted out of her matrimonial house, it cannot be said that she is maintaining illicit relation with third party. The evidence led by the respondent, itself is of marriage and not of

maintaining any illicit relationship.

10. We find that the learned Court below has taken into consideration number of decisions that the mother of a minor child is most suitable apart from being natural guardian unless there are material to show that she incurs from some kind of disqualification to maintain the child.

11. We need to mention, at this stage, that the child had come to this Court and upon being asked, the child initially was not able to give any intelligible response but momentarily as the child had come along with his aunt, he preferred to go along with the aunt. Looking to the age of the child, all other aspects of the matter as we have discussed above, cannot be ignored.

12. In our opinion also, the welfare of the child rests in giving his custody to his mother.

13. In the result, we do not find any good ground to interfere with the impugned order. The appeal is, therefore, dismissed.

Sd/-

(Manindra Mohan Shrivastava)

Judge

Sd/-

(Vimla Singh Kapoor)

Judge