

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No.186 of 2019

Preman Prasad, S/o Bhuwan Prasad Dhritlahre, Aged About 35 Years
Assistant Teacher, Government Higher Secondary School, Village
Risda, District Baldoabazar Chhattisgarh **---- Appellant**

Versus

Smt. Pushpa, W/o Preman Prasad Dhritlahare, Aged About 33 Years
Anganbadi Worker, R/o Village Kobiya, Ward No.7, Tahsil And District
Bemetara Chhattisgarh **--- Respondent**

For Appellant	:	Mr. Vivek Shrivastava, Advocate
For Respondent	:	Mr. Samir Singh, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board by Manindra Mohan Shrivastava, J.

06/08/2019

1. This appeal is directed against order dated 29.04.2019, by which, the learned Family Court has rejected husband's application for grant of custody of his minor child, allowing the child to remain in the custody of the respondent- mother.

2. The appellant moved an application under Section 25 of the Guardians & Wards Act, 1890 read with Section 6 of the Hindu Minority and Guardianship Act, 1956 seeking custody of his minor child Shubham. According to the appellant, the child was born on 01.03.2010 out of the wedlock of appellant with the respondent. According to the appellant, the respondent of her own, has left the matrimonial house and she is not allowing the appellant to meet his own son. According to the appellant, the respondent earns a meager income and she is not able to maintain the sole child with that meager income. The appellant resides at a better place where better education facility is available, If the child is given to the custody of the appellant, who earns far more than his wife, he will be able to maintain the child better than respondent.

3. The appellant's claim was opposed by respondent by submitting that the appellant was in bad habits, habitual drunkard and used to subject respondent to cruelty. He never visited Bemetara nor made any attempt to meet the child. She being in job as Anganbadi worker, is able to maintain the child and she is also providing him proper education at Bemetara.

4. Learned Trial Court taking into consideration the respective claim, the financial status of the husband and wife, availability of school education of the child, came to the conclusion that at this stage, it is in the larger interest of the welfare of the child that the child remains in the custody of his mother. On these circumstances, the application was rejected, giving rise to this appeal.

5. Learned counsel for the appellant would submit that the learned Family Court has ignored that admittedly the appellant is the father of 9 years boy child. It is submitted that the appellant is far more financially sound as compared to his wife and with the growth of the child, the child would require better facility, school education and all other supports necessary for his development. He would also submit that in proceeding under Section 125 Cr.P.C. wife has claimed the maintenance by stating that she is not able to maintain herself, and she does not have sufficient income. According to him, the child is not too young and infant that even now, the child would require intensive mother care like baby feeding etc., therefore, learned Court below ought to have granted custody of the child.

6. On the other hand, learned counsel for the respondent-wife would submit that the child is hardly aged 9 years and at this stage, the child needs care and company of the mother, the respondent is working as Anganbadi worker, therefore, she is not only able to maintain the child but also to provide all necessary financial support to ensure proper education.

7. We have heard learned counsel for the parties.

8. The child was also produced before the Court. We inquired from the child and at present, the child expressed his willingness to reside with the mother.

9. From the impugned judgment, we find that the father of the child is financially sound and in a better position as compared to the mother. The mother is working as Anganbadi worker, whereas, the appellant is working as teacher, earning much more than his wife. As far as the availability of

education facility is concerned, we do not find that there is much difference between the availability of facility at Balodabazar and Bemetara.

10. The most important consideration in the matter of awarding custody of the child, is welfare of the child to be taken as paramount consideration.

11. We find that the learned Family Court after weighing the entire material on record, looking to the age of the child, at present, has rejected the application of the appellant husband. At this stage, taking into consideration all these circumstances, the financial capacity of respondent wife and particularly taking into consideration the age of the child, as also his willingness, we are not inclined to interfere with the order of the learned Court below.

12. However, the appellant would be entitled to proper visitation rights in the manner that the appellant can meet the child every Sunday after 10 a.m. in the morning till 6 p.m. in the evening and subject to child agreeing to go along with the appellant, the appellant may also take the child for excursion, entertainment etc.

13. The appellant husband would be at liberty to revive his application for custody of child after two years, taking into consideration the growing need of the child and that the father has better financial capacity as compared to respondent wife.

14. Accordingly, the appeal is disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge