

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
FAM No. 105 of 2017

Yogesh Pratap Masih s/o. Late Prabhudayal, aged about 40 years, occupation driver, R/o. Villae and post Pasla, Police Station, Tahsil and District Anuppur (M.P.), presently resident at village Bandhpara, Ward No. 16, Nagar Charcha, Tahsil Baikunthpur, District Korea (C.G.)

---- Appellant

Versus

1. Smt. Bina Karin Wd/o. Late Prabhat Karin, aged about 52 years,
2. Anup Tirky S/o. Not known, aged about 42 years, R/o. Village Rampur, Police Station and Tahsil Baikunthpur, District Korea (C.G.)
3. Smt. Sarita W/o. Yogesh Pratap Masih, D/o. Late Prabhat Kumar, aged about 29 years, occupation business, sewing and beauty parlor, R/o. Village Rampur, Police Station and Tahsil Baikunthpur, District Korea (C.G.)

---- Respondents

For the Appellant :- Smt. Arti Chande, Advocate
For the Respondents :- Shri Anil Gulati, Advocate

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

Order on Board By Prashant Kumar Mishra, J.

11.01.2019

1. The trial Court has rejected the appellant's application under Section 10 of the Guardian and Wards Act 1890 (hereinafter

referred to as the 'Act') for custody of minor Jogendra @ Arsh, aged 11 years and Cristina @ Anushka aged 10 years.

2. The appellant is working as driver in a private school whereas respondent No. 3/wife is running a stitching centre and beauty parlor at Rampur near Baikunthpur, District Korea. On account of marital dispute between the appellant and respondent No.3, they are living separately for last more than five years.
2. On the application of respondent No. 3 the appellant was tried for committing offence under Section 498-A IPC in which he has been acquitted, as informed by the appellant's counsel.
3. The present application under Section 10 of the Act 1890 was filed on 30.07.2015 alleging that the respondent No. 3/wife is not taking proper care of the minor children, therefore, to protect the interest and future of the children, their custody should be handed over to the appellant. It is alleged that the children are not sent to school regularly and they are made to do household work. However, the family Court has not found the said allegation to be proved. The family Court has referred to the evidence to conclude that the children are being sent to school regularly and they are not suffering from any aliment or malnutrition as alleged by the appellant.
4. Appellant's counsel would refer to the judgment rendered by the Supreme Court in the matter of **Mausami Moitra Ganguli v. Jayant Ganguli (2008) 7 SCC 673, Sheila B. Das v. P.R.**

Sugasree (2006) 3 SCC 62, and Shaleen Kabra v. Shiwani Kabra (2012) 5 SCC 355.

5. In custody matters the paramount interest of the children should weigh with Courts exercise of judicial discretion and each case is to be decided on the basis of its own facts. No straight jacket formula can be laid down in such matters. Courts opinion is always governed by the social status of the parents, the choice of the children if they have attained the age of discretion, their paramount interest etc. keeping the above aspects of the matter in mind, we have reached to the conclusion that present is a case where the custody of the children should remain with the mother.
6. The trial Court had also interacted with the children in the course of trial. Today, minor Jogendra @ Arsh and Cristina @ Anushka are present before us. We have interacted with them for some time and have gathered that they are sufficiently intelligent. According to them, they attend classes at St. Xaviers School Rampur regularly and are not made to do any household work. They have categorically stated that the household work is performed by their mother and grand-mother. On 02.11.2018 we had directed that the appellant may meet with the children, if he so desires, and whenever he reaches the residence of the children no obstruction shall be put on his way in so doing. Both the minor children would inform that on the Christmas day falling on 25.12.2018 and even yesterday their father had come to meet them at their residence and there was no hindrance of any sort by anyone.

7. There is no complaint from the appellant side that during his visit to the house of respondent No.3 on 25.12.2018 or even yesterday he was subjected to any mis-behaviour by the respondent No. 3 or by any other member of the family. Thus, It appears that his visit to the residence of respondent No.3 is not being obstructed by anyone.
8. Considering the whole gamut of the circumstances, particularly the statement made by the children namely Jogendra @ Arsh and Cristina @ Anushka before this Court and also keeping in mind the manner in which they interacted with us, we are satisfied that their interest and future is being properly taken care of by the respondent No. 3.
9. It is not a case where the appellant is so well off that he is in a position to provide much better education facility to the children. The appellant also resides in the same district and is working as driver in a private school. Likewise, the respondent No.3 is self-employed having her own vocation of stitching centre and beauty parlor, therefore, both are almost on equal financial footings. In these circumstances, the view expressed by the children assumes significance and it can not be ignored while deciding the issue for handing over their custody to the appellant.
10. On the basis of above discussion, we are satisfied that learned Family Court has rightly decided to reject the appellant's prayer for seeking custody of the minor children. We affirm the view taken by the family Court. At the same time, we are of the view that it is also the father's right to meet the children and shower

his love and affection on them. Therefore, for the present we allow visitation right in favour of the father to meet both the children at Rampur, Baikunthpur on 1st and 3rd Sunday of every month between 11 am and 5 pm starting from the month of February 2019 except in march when the children will be preparing and writing annual exams. Thereafter, his visitation right will again commence from April 2019 on the days and timings stipulated above. It is expected of both the parties i.e. the appellant and the respondent No. 3 that during such visits they shall maintain absolute cordiality so that their inter-se clash does not affect the innocent and formative mind of the children.

11. The appeal stands dismissed subject to the visitation right allowed in favour of the appellant.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor