

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.815 OF 2018
WITH
CIVIL APPLICATION NO.2625 OF 2018
IN
FIRST APPEAL (STAMP) NO.3197 OF 2018

1. Raju Uttam Trimbake,
Age : 49 years, Occu.
Agri. and Business
2. Sau. Meerabai w/o Raju Trimbake,
Age : 42 years, Occu. Household

Both r/o Near Mahadeo Temple,
Nepti, Taluka and District
Ahmednagar

**APPELLANTS/
APPLICANTS
(Orig.Opponents)**

VERSUS

Bhausahab Bhimaji Shinde,
Age : 32 years, Occu. Agri.,
R/o Pimpalgaon Malvi,
Tal. Nagar, District Ahmednagar

**RESPONDENT
(Orig. Applicant)**

Mr. D.D. Chaudhari, Advocate for the
appellants/applicants
Mr. J.R. Patil, Advocate for the respondent

CORAM : SUNIL K. KOTWAL, J.

JUDGMENT RESERVED ON : 15th APRIL, 2019

JUDGMENT PRONOUNCED ON : 24th APRIL, 2019

JUDGMENT :

This appeal is directed by original opponent Nos.1 and 2 in Civil Misc. Application No.305 of 2015, against the judgment and order passed by District Judge-4, Ahmednagar, directing the opponents to handover the custody of children Master Rudraksh Bhausaheb Shinde and Miss Aachal Bhausaheb Shinde to the then applicant Bhausaheb Bhimaji Shinde. In this appeal, the appellants are original opponent Nos.1 and 2, respectively. Respondent is the original applicant. Hereinafter, the parties are referred in accordance with their status in the original proceeding as applicant and opponent Nos.1 and 2.

2. The facts leading to institution of this appeal are that applicant, who is the son-in-law of the opponents, filed application under Section 25 of the Guardian and Wards Act, 1890 for custody of minor children Master Rudraksh and Miss Aachal. In that proceeding, the undisputed facts in between parties are that applicant is biological father of Master Rudraksh and Miss Aachal. On 26th February, 2008, applicant married the daughter of opponent Nos.1 and 2 namely Sonali. Applicant and Sonali were blessed with children

namely Rudraksh and Aachal. Applicant and Sonali cohabited at village Pimpalgaon Malvi, Taluka Nagar, District Ahmednagar along with their both children. On 26th October, 2015, Sonali committed suicide. Thereafter, on report lodged by opponents to Police Station, MIDC, offence was registered against the applicant and his relatives under Sections 498, 306 read with Section 34 of the Indian Penal Code. The applicant was arrested by police in the said crime alongwith his relatives. When applicant was in jail, that time, opponents took the minor children of applicant and late Sonali, in their custody and since thereafter, the minor children are in the custody of opponent Nos.1 and 2.

3. After release from the jail, applicant filed application before District Court, Ahmednagar under Section 25 of the Guardian and Wards Act, 1890 for custody of his minor children contending that being father of the children and for proper care and development of the minor children, the applicant is entitled to custody of his own minor son and daughter.

4. By filing written statement (Exh-14), opponent Nos.1 and 2 opposed the application, contending that due to illtreatment given by the applicant to their daughter

Sonali, she committed suicide on 26th October, 2015. Applicant is lazy person and he would not be in a position to maintain his children properly. On the other hand, opponents are taking due care regarding development and education of his minor children who are also grandchildren of the opponents. At present, Aachal has taken admission in reputed school at Pune and for welfare and future of the children, they should be retained in the custody of opponents.

5. After considering the evidence placed on record by both the parties, the learned Trial court allowed the application for custody of children and directed the opponents to handover their custody to the applicant. The access of children was given to the opponents and their relatives, whenever they desire.

6. Heard Shri D.D. Chaudhari, learned counsel for the appellants/opponents and Shri J.R. Patil, learned counsel for the respondent/applicant.

7. Learned counsel for the opponents submits that the opponents being maternal grandparents of children, for better education and future development of the children, their custody with the opponents is justified.

He submits that opponents are even financially sound than the applicant. He has drawn my attention towards cross-examination of the applicant wherein the applicant admits the sound financial condition of the opponents.

8. Learned counsel for the applicant submits that being biological father of minor children, only the applicant can take proper care regarding development and education of the children. He submits that even the applicant is owner of landed property and he is financially sound to look after welfare of his own children. He submits that being natural guardian of children, the applicant has a right claim custody of the children.

9. It is to be noted that at the time of death of the wife of applicant, his son Rudraksh was about 7 years old and daughter Aachal was 4 years old. Thus, at that relevant time, they were not of the age of understanding. At the time of recording evidence in the proceeding for custody of children, the Trial Court has personally interviewed the children and found that the children have no grievance even against their father (applicant). However, children expressed their willingness to continue their residence with the

opponents.

10. It is to be noted that considering the minor age of both children and their capacity to understand, the situation and their future prospect, over much importance cannot be given to the willingness of children to continue their residence with their maternal grandparents. While considering the dispute regarding custody of minor children, the Court is expected to give paramount consideration to the welfare of the children. It cannot be ignored that the applicant being father of the children, he is also natural guardian of the minor children under Section 6 of the Hindu Minority and Guardianship Act, 1956. So also, considering the close relation of applicant with his own son and daughter, for the psychological and sociological development of his minor children, their residence with their own father is more appropriate than their residence at maternal grandparental home. So also considering the advance age of opponents and building contractorship occupation of opponent No.1, it appears that they would not be in a position to take proper care of their minor grandchildren. On the other hand, applicant being well educated young agriculturist, can definitely spare more

time to look after the proper development of his minor son and daughter. Record shows that even applicant is holder of substantial agricultural land at village Pimpalgaon Malvi. Therefore, it cannot be said that the applicant would not be in financial position to maintain his own children. Despite passage of number of years from the date of death of late Sonali, the applicant has not performed his second marriage, which indicates his bonafide intention to devote for development of his own children. The Trial Court has also considered all these circumstances as well as educational qualification of the applicant while holding that custody of the minor children with the applicant would be more justifiable than the custody with the opponents. Thus considering the welfare and future psychological and sociological development of minor children, I hold that the learned Trial Court rightly allowed the application of the applicant while directing the opponents to handover the custody of Master Rudraksh and Miss Aachal to the applicant.

11. In the result, I hold that this appeal being devoid of merit deserves to be dismissed. Accordingly First Appeal No.815 of 2018 is dismissed. In view of

dismissal of First Appeal, Civil Application No.2625/2018 does not survive and hence, stands disposed of. The parties to bear their respective costs of the appeal.

[SUNIL K. KOTWAL]
JUDGE

npj/fa815-2018