

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-769-2019

Decided on : 04.10.2019

Jeet Singh and anr.

..... Appellants

Versus

Chand Singh

..... Respondent

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. T.P.S.Makkar, Advocate
for the appellants.

Mr. J.S.Brar, Advocate
for the respondent.

Mr. I.P.S.Doabia, Addl. AG, Punjab.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the paternal grandparents of the minor child, Abhinoor Kaur, against the order dated 14.12.2018 vide which petition filed by the respondent-Chand Singh under Section 6 of Hindu Minority & Guardianship Act read with Sections 7 & 10 of Guardian and Wards Act, 1890 (for short 'the Act') for getting the custody and for being appointed as guardian of the person of minor child was allowed by the trial Court by passing the following directions:

- i) That the respondents are directed to hand over the minor Abhinoor Kaur to the petitioners within one month from day of preparation of copy of this order.
- ii) That the respondents being paternal grandparents are permitted to meet the minor child on holidays or on any other day on one occasion in a month with prior notice to

the petitioners for an hour at any suitable place agreed upon by the parties. None of the parties would create any untoward act affecting the health of the minor.

- iii) If in the due course, the Jaspreet Singh, father of the minor succeeds in getting himself cleared from the allegations of unnatural death of mother of the minor i.e. he is acquitted by the Court and he wins over the love and affection of the child, he would be at liberty to move this Court for modification of the order of this Court regarding custody of child.
- iv) That the petitioners will make arrangement for better education, maintenance and bringing up of minor Abhinoor Kaur and they would make arrangement for it. The petitioners shall deposit a sum of Rs.5 lakhs in the name of minor Abhinoor Kaur within one month from the date of preparation of copy of this order till the age of her majority, failing which the present petition shall deem to have been dismissed.
- v) Abhinoor Kaur will be at liberty to live with the party she likes after attaining the age of majority.

2. A few facts as contained in the petition filed before the Court below by the respondent-Chand Singh (maternal grandfather of the minor child) may be noticed. Rajvir Kaur (since deceased), mother of the minor child Abhinoor Kaur and daughter of respondent, was married with Jaspreet Singh on 05.12.2014. Out of the said wedlock, minor child Abhinoor Kaur

was born on 05.04.2016. Unfortunately on 14.06.2017 Rajvir Kaur died an unnatural death as a result of which a criminal case bearing FIR No.83 dated 14.06.2017 under Section 304-B and 34 IPC was registered against Jaspreet Singh and Gurbinder Kaur @ Nikki. The father of the minor child is currently in jail whereas paternal aunt Gurbinder Kaur @ Nikki is still at large. The paternal grandparents are senior citizens aged more than 70 years and suffering from various medical ailments. It was pleaded that the house of the paternal grandparents was situated in an isolated place at a distance of about 4 kms from the village and there was no good school or even a hospital in the vicinity. As such there was nobody in the family to look after the welfare of the minor child properly. Moreover, the atmosphere in the house after the death of the mother of the minor child was not conducive to the normal upbringing to the child. It was further pleaded that he and his wife were in good health and were educated as well. They were residing with their only son, who was married as a result of which the minor child Abhinoor Kaur would get not only proper love and care but also there would be round the clock monitoring of her education and other needs.

3. Per contra, the appellants in their reply filed before the Court below refuted and categorically denied the allegations of the respondent. It was submitted that in fact a false case had been registered against their son and daughter. It was also submitted that they had great love and affection for the minor child coupled with the fact that they had sufficient means to provide good education and other facilities to the child.

4. Rejoinder to the written statement was also filed in which the contentions of the respondents were controverted by the appellants.

5. On completion of pleading of the parties, following issues were framed by the learned trial Court:

1. Whether petitioner is entitled to be appointed as Guardian of minor Abhinoor Kaur d/o Jaspreet Singh as prayed for? OPP
2. Whether petitioner is entitled to the custody of minor Abhinoor Kaur as prayed for? OPP
3. Whether petition is not maintainable in the present form? OPR
4. Whether petitioner is estopped by his own act and conduct from filing the present petition? OPR
5. Whether petitioner has concealed the material facts from the Court and has not come to the Court with clean hands? OPR
6. Relief.

6. In order to prove the case, the respondent himself stepped into the witness box as PW-1 and examined two more witnesses. He also tendered certain documents i.e. Ex.P1 to P-34. On the other hand, appellant No.1 stepped into witness box as RW-1 and examined one more witness as RW-2.

7. We have heard learned counsel for the appellants and perused the evidence as well as other material available on record.

8. In matters of custody and guardianship of a minor, the paramount consideration has to be the welfare of the child and child alone.

“Welfare of the child” has to be construed in the widest sense and would also include within its ambit financial, emotional as well as physical comforts with particular regard to the age and gender of the minor child and most importantly to ascertain the capacity of the person to contribute to the

child's over all development.

9. In the case in hand, it is not disputed that the paternal grandparents are living all alone with the minor child. The grandparents are admittedly more than 70 years of age as compared with the maternal grandparents, who are much younger in age and are admittedly residing with their married son, daughter-in-law and his child, who is almost of the same age as Abhinoor Kaur. Hence, it goes without saying that the minor child Abhinoor Kaur would be brought up under the constant supervision of the maternal grandparents, which would also help in facilitating a healthy overall development for Abhinoor Kaur and a normal family atmosphere, with a cousin who is almost the same age as her. A child of any age specially in his/her formative years needs a happy and cheerful atmosphere at home, which definitely would be missing in the house of the paternal grandparents. Since it is not disputed that the maternal grandparents are financially comfortable, the minor child would not even be deprived of any material comforts, which she may be enjoying at the house of her paternal grandparents.

10. Hence, we do not find any infirmity or illegality in the impugned order passed by the learned Court below as the same is a well reasoned one. Accordingly, the instant appeal being devoid of merit, is dismissed.

(RAJAN GUPTA)
JUDGE

04.10.2019

sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No