

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

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**FAO-2157-2019 (O&M)
Date of Decision : 19.03.2019**

Amarjit Kaur

... Appellant

Versus

Sandeep Kaur and others

...Respondents

**CORAM:HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. L.S.Sidhu, Advocate for the appellant.

HARNARESH SINGH GILL, J.

This appeal is against the order dated 25.01.2019 passed by the Additional Civil Judge (Senior Division), Mansa, vide which the custody of Jasmeen Kaur (minor) has been handed over to her mother/natural guardian, Sandeep Kaur, under Section 6 of Hindu Minority and Guardianship Act, 1956 (for short 'the 1956 Act') read with Section 25 of the Guardian and Wards Act, 1890 (for short 'the 1890 Act').

The brief facts of the case are that the marriage of Sandeep Kaur-respondent was solemnized with Jagtar Singh on 03.03.2013. Out of the wedlock, one girl child namely Jasmeen Kaur was born. The relation between the husband and wife were not cordial and, thus, Sandeep Kaur-respondent had filed a petition under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the 1955 Act') on 30.01.2016. The said petition was withdrawn because of unfortunate death of her husband-Jagtar Singh on 16.12.2017.

Upon notice issued by the Additional Civil Judge (Senior Division), Mansa, Amarjit Kaur-appellant, grandmother of Jasmeen Kaur

rebutted the assertions made by respondent-Sandeep Kaur. It was pointed out that Sandeep Kaur had illicit relations with one Satti and it was she, who had forced her husband to commit suicide on 16.12.2016 as Jagtar Singh was serving in the Indian Army. It was further stated that a compromise was effected between Sandeep Kaur-respondent and her late husband Jagtar Singh on 19.11.2016, on the basis of which the petition under Section 13 of the 1955 Act was filed and as per the compromise, custody of Jasmeen Kaur was handed over to Jagtar Singh. Being the army personnel, appellant and her family members are looking after Jasmeen Kaur well.

After taking into consideration, the facts and circumstances of the case, petition under Section 6 of the 1956 Act was allowed and custody of Jasmeen Kaur (minor) was handed over to respondent-Sandeep Kaur, mother.

We have heard learned counsel for the appellant.

It has been argued that respondent-Sandeep Kaur was maintaining illicit relations with one Satti. Since her husband was in the Indian Army, a petition for mutual divorce, under Section 13-B of the 1955 Act, was filed on 30.01.2006. Because of the immoral conduct of respondent-Sandeep Kaur, Jagtar Singh committed suicide on 16.12.2017. It is further argued that before his death, on 19.12.2016, a compromise was effected and the custody of minor child, Jasmeen Kaur was handed over to Jagtar Singh and she is now being looked after by appellant-Amarjit Kaur and her other family members.

It has come on record that Sandeep Kaur-respondent is receiving the pension of her husband amounting to ₹15,000/- per month and is earning ₹9,000/- per month by stitching clothes. It has been pointed out that

Amarjit Kaur-appellant, grandmother is of old age and she is not capable to look after her minor daughter. It has been admitted by Amarjit Kaur-appellant in her cross-examination that she has two sons and one daughter and she has no land in her name.

Respondent-Sandeep Kaur is mother/natural guardian of the child, aged 5 years, and is having ample income to look after her child. Moreover, there is an emotional attachment between the mother and her daughter, which will keep Jasmeen Kaur in good mental and spiritual health. Even otherwise, every child has love and affection with his or her mother. Section 6 of the 1956 Act specifically carves out that the custody of minor daughter will be with the mother. The present proceedings have been initiated under Section 25 of the 1890 Act. However, the same are to be read in consonance with the provisions of the 1956 Act. Section 6 of the 1956 Act, would read as under:-

“6. Natural guardians of a Hindu minor.- The natural guardians of a Hindu, minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are- (a) in the case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;.

(b) ”

From a bare perusal of the aforesaid extracts, it is clear that Section 6(a) of the 1956 Act stipulates that in the case of a boy or an unmarried girl, the father, and after him, the mother would be the guardian, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. From the said provisions, it is

apparent that the custody of a child, who is less than five years of age, shall

ordinarily remain with the mother.

Moreover, the father of Jasmeen Kaur has since died and senerio regarding custody has changed and now if the custody of the minor is not given to mother/respondent then she will be deprived of the motherly love and affection.

Still further, the provisions of Section 25 of the 1890 Act provide that while passing the order(s) as regards the custody of the minor child, the Court has to take into consideration the welfare of the ward.

Keeping in view the aforesaid factual position, it is apparently clear that the child in the instant case is around five years of age. Thus, in view of the aforesaid statutory provisions, her custody is to remain with the mother. Hence, the order passed by the trial Court cannot be found fault with.

In view of the above, we do not find any illegality or infirmity in the order passed by the learned trial Court, which may warrant interference by this Court in the present appeal.

Hence, the present appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

19.03.2019
pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No