

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

FAO-5417-2015

Decided on : 20.09.2019

Manju Rani

... Appellant(s)

Versus

Kartar Singh

... Respondent(s)

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

Argued by: Mr. Sudhanshu Makkar, Advocate
for the appellant(s).

Mr. J.P. Sharma, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the wife – Manju Rani, impugning the judgment and decree dated 14th July, 2015, passed by the Ld. District Judge, Family Court, Hisar (in short 'Ld. Family Court') vide which the petition filed by her, under Section 25 of the Guardian and Wards Act, 1890 (for brevity 'the Act'), seeking custody of her children namely Trivesh @ Hanny, Neelam and Manni, was dismissed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the appellant-wife (petitioner therein) before the Ld. Family Court, may be noticed. The marriage between the parties was solemnized on 23rd April, 2000 at Hansi, as per Hindu rites and ceremonies. The parties lived and cohabited together at Village Prem Nagar and three children namely Trivesh @ Hanny, Neelam and Manni were born out of the wedlock, who are in the custody of the respondent-father. The respondent-husband and his family would ill-treat the appellant and subject her to severe

physical and mental harassment. The respondent-husband was a drunkard and would demand money from the appellant to meet his expenses. Parents of the appellant-wife would come to her rescue and fulfill the demands of the respondent-husband and his family. The respondent had no love and affection for the children who too would be beaten up by him. In the month of January 2012, the appellant-wife was turned out of the matrimonial home by the respondent-husband. Many Panchayats were convened to bring about a reconciliation between the spouses, but in vain. As per the appellant, the respondent-husband is presently running a Kiryana shop in the village and he remains at his shop for most part of the day. There is no body to take care of the children, who are being thus neglected. The appellant pleaded that since she was the natural guardian of her children, she was in a better position to shower all the love and affection necessary for their all round development and also provide them good education at Hansi.

On the contrary, in the written statement filed by the respondent-husband before the Ld. Family Court, he categorically refuted and denied all the allegations. It was submitted by the respondent-husband that the appellant-wife (mother) had all along been neglecting the children and had no love and affection for them. The mother in fact was a stranger to the children as she had herself abandoned and left them at the mercy of the respondent when they were very young and the youngest son at that time was only six months old. Even though he had made earnest efforts for reconciliation but the wife had refused to live with him. She had also lodged a false FIR No. 48, dated 01.12.2006, under Sections 323,498-A,406, 506 IPC, at Police Station Hansi and a frivolous petition under Section 12 of the D.V. Act with the collusion of her parents and relatives against the respondent-husband and his aged parents. He

submitted that he was giving all the love and affection to the children and was looking after them in the best possible way. She willfully deserted him and the children continuously for almost 07 years 04 months.

From the pleadings of the parties, the following issues were framed by the Ld. Family Court:-

- “1. Whether the petitioner is entitled for the custody of minor children on the grounds, as alleged in the petition ? OPP*
- 2. Whether the petition is not maintainable in the present form ? OPR*
- 3. Whether the petitioner has no locus standi and cause of action to file the present petition ? OPR*
- 4. Relief.”*

Both the parties adduced evidence in support of their respective stands before the Ld. Family court. The appellant-wife herself stepped into witness-box as PW-1 and also examined Ramesh Kumar as PW-2, while the respondent-husband examined himself as RW-1 and closed his evidence.

After analyzing the evidence led by the parties and also the material on record, Ld. Family Court dismissed the petition filed by the appellant-wife.

We have heard learned counsel for the appellant and have reappraised the evidence and other material on record.

It may be noticed that the parties during the arguments have reiterated their earlier versions and stuck to their respective stands as taken before the Ld. Family Court. During the pendency of the appeal, the parties were referred to the Mediation and Conciliation Centre of this Court to settle their dispute by way of an amicable settlement, but it failed to yield any

positive result.

As per the mandate of law, the welfare of the ward is of primary consideration in matters of custody. In the instant case, it has come in evidence that the house of the respondent-father adjoins his shop, as a result of which he takes care of his children as well. It is not disputed that all three children have been living with the respondent-father ever since the appellant-mother left her matrimonial home in the year January 2012. Out of the three children, the eldest child Trivesh @ Hanny is now a major, whereas, the second child a daughter namely Neelam is above 17 years of age, while the youngest son Manni is 16 years old. A perusal of the impugned judgment reveals that when the three children were produced in the Court below, they categorically stated that they were living willingly and very happily with their father and they were hardly acquainted with their mother. In view of the statements made and after an interaction with the children, the Ld. Family Court rightly declined to hand over their custody to the appellant.

In the facts and circumstances of the case, we do not find any ground, which would warrant interference in the impugned judgment, as the children can not be forced to reside against their wishes with a parent, who had abandoned them when they were very young and had been brought up ever since by the respondent-father.

During the course of arguments, it has been prayed by the learned counsel for the appellant that in the eventuality of the impugned judgment and decree being upheld, the appellant be at least given the visitation rights *qua* her youngest son 'Manni'. It is pertinent to mention here that during the pendency of the instant appeal, vide order dated 07.02.2017, of this Court, the appellant-

mother was granted the visitation rights to meet her children in the school,

where, the three children were studying at that point of time.

After consideration of all relevant facts, we are of the view that the visitation rights to the appellant-mother ought not to be denied. We, therefore, direct that the appellant would have the right to visit and meet her youngest son 'Manni'. She would meet him on the Court premises of Additional Civil Judge (Sr. Division)-cum-Chairman, Sub-Divisional Legal Services Committee, Hansi, on every 1st and 3rd Saturday of each month between 11:00 AM to 2:00 PM. The instant appeal stands disposed off and the judgment and decree dated 14th July, 2015 of the Ld. Family Court, is upheld with the modification as indicated above in respect of the visitation rights.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

September 20, 2019

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No