

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

FAO-4891-2018

Date of decision : 09.12.2019

Suresh

....Appellant

V/s

Sonia & ors.

....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Parshant Sethi, Advocate for the appellant.

Mr. Sansar Kundu, Advocate for the respondent.

RAJAN GUPTA J. (ORAL)

Appellant is aggrieved by judgment dated 09.07.2018 passed by Additional District Judge, Jind whereby petition filed by him under section 25 of the Guardian and Wards Act, 1890 seeking custody of minor daughter has been dismissed. Brief factual background of the case is that appellant-Suresh got married to respondent no. 1 Sonia on 11.11.2005. A girl child namely Muskan was born on 11.11.2005. However, marriage of appellant and respondent no. 1 could not sustain and same was dissolved by way of decree of divorce on 01.08.2012. Thereafter, both the parties' remarried and the minor girl started residing with her maternal grandfather (i.e. respondent no. 2 herein). Appellant filed petition under section 25 of the Guardian & Ward Act, 1890 seeking custody of her minor daughter on the ground that she was not being looked after properly by the respondents. As she is more than five years, he is legally entitled for her custody. Respondents refuted the plea and filed written statement. They stated that appellant had neither taken any care of the minor child nor paid

any maintenance towards her education or upliftment. If custody of minor child was handed-over to him, her life would be spoiled. Besides, appellant was having no source of income to maintain himself. They claimed that the minor daughter was living happily with them and every care was taken for her healthy upbringing. In support of his case, appellant himself stepped into the witness as PW1 and examined three other witnesses who had corroborated the version of the appellant. Likewise respondents stuck to their stands while deposing before the court. Trial court after considering the rival contentions came to the conclusion that custody of minor child was safe with the respondents no. 2 & 3 as they could serve better. It, thus, dismissed his petition.

We find no infirmity with the impugned order. It is evident that marriage between the parties was solemnized and out of this wedlock one female child was born. However, differences developed and ultimately marriage was dissolved by decree of divorce. Admittedly, both the parties remarried and minor daughter started living with her maternal grand-parents. It has come on record that during the subsistence of first marriage, respondent no. 1 had instituted an application under section 125 Cr.P.C. which was allowed and appellant was directed to pay maintenance of ₹1500/- each to respondent no. 1 and the minor daughter. However, appellant did not comply with the order and as a result he was sent to jail. Even during the course of proceedings before the court below, minor child Muksan was interacted and she has specifically stated that she was living happily with her maternal grand-parents and does not want to go with the appellant. Keeping in view the facts and circumstances of the case, it would

be in the interest and welfare of the children if her custody remains with respondents no. 2 & 3.

In view of above, we do not find any merit in the present appeal. Same is hereby dismissed.

(RAJAN GUPTA)
JUDGE

December 09, 2019
Ajay

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No