

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

FAO No.1259 of 2020

Date of Decision: 12.02.2020

Seema Kaur

....Petitioner

Versus

Jaswinder Kaur and another

....Respondents

***CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Mr. Pardeep Kumar Kapila, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Appellant-Seema Kaur has filed the present appeal to challenge the judgment dated 09.01.2020 passed by the Principal Judge, Family Court, Barnala, whereby, the petition filed Jaswinder Kaur (respondent No.1) was allowed in her favour but against the appellant and the custody of minor children was directed to be handed over to respondent No.1 herein before Secretary, District Legal Services Authority, Barnala after intimating the date and time to respondent No.1 within a period of two months.

Briefly, the facts of the case, which are relevant for the present case, are that Jaswinder Kaur (respondent No.1) got married with one Nimma Singh in the year 2012. However, out of said wedlock, two children namely Mandeep Kaur and Jaspreet Singh were born and they are residing with present appellant i.e. Seema Kaur and respondent No.2-Jailo Kaur.

Said Nimma Singh expired in an accident on 16.12.2017 and thereafter, the

dispute arose between the parties. Respondent no.2-Jaswinder Kaur, the mother of the children left to her parental home along with her children. The present appellant-Seema Kaur and respondent No.2 Jailo Kaur forcibly took away both the children. The mother of the children filed a petition under Section 25 of the Guardians and Wards Act which was allowed. The children were residing with present appellant and respondent No.2.

Learned counsel for the appellant submits that mother of the children (Jaswinder Kaur) was having illicit relation with some other person and she was responsible for the death of her husband Nimma Singh. She herself left the matrimonial home. Learned counsel also submits that the lower Court has not taken into consideration the relevant facts and the circumstances of the case and a wrong finding has been recorded. The prime consideration is the welfare of the children and respondent No.1 cannot look after the interest of minor children. At the end, learned counsel for the appellant submits that in case, the appeal of the appellant is dismissed then a period of two months' be given for handing over the custody of the children because of their examinations. It has been undertaken to hand over the custody immediately after the expiry of period of two months.

Admittedly, the present appellant is sister-in-law of the mother of minor children and custody has been sought on the ground that the mother of the children has left the matrimonial home without taking into consideration the welfare of the children whereas the children cannot be looked after by her as she is having illicit relation with some other person. Nothing has been mentioned as to how the welfare of the minor children cannot be look after by the mother. Simply by saying that the mother of the children is having illicit relation and interest of the children cannot be

looked after is not sufficient. Moreover, the present appellant is having her own children and the welfare of the children is always with the mother who is a natural guardian. The role of the mother in bringing up of the children cannot be doubted as mother is always concerned with the welfare of the child being the natural guardian. Simply by saying that mother cannot take care of the children and to give custody to aunt (chachi) who is not only having her own children but they would be deprived of love and affection of the mother. The prime consideration is the welfare of the children so that they may grow up in a normal balanced manner to be useful members of the society. The presence of the mother is necessary for the development of a child's personality and her ability in performing duty while looking after the children cannot be doubted.

While granting custody of the children, it is to be seen as to whether the children would be given love and affection by the mother as the company of the mother is the most natural thing for a child. While deciding issue of custody of minor, the Court is to see various factors. By taking into consideration the welfare of the child, it is to be seen as to which of the party can look after the children in a better manner with love and affection. It is also to be seen as to who is most likely to contribute to the well-being of the minor and also to bring up and educate the minor in the manner as required to develop their personality. The proper custody depends upon the circumstances and in particular, upon the minor's position and prospects in life. The welfare of the child is not to be measured by money alone but there are certain other factors which are necessary to be taken into consideration. The prime consideration is the 'welfare' of the child and the word 'welfare' has to be taken in its widest sense. It includes physical as well as love and

affection.

In the present case, all the factors have been taken into consideration and a detailed speaking order has been passed. It cannot be said in any manner that the findings recorded by the lower Court are perverse or the stand of the appellant has not been taken into consideration. Although, there are allegations of having illicit relation of the mother with some other person but nothing has been brought on record to this effect.

Accordingly, by keeping in view the facts and circumstances of the present case and on perusal of findings recorded by the lower Court, we find no reason to interfere with the impugned judgment and the present appeal is hereby dismissed. It is also directed to the appellant to hand over the custody of the children to respondent No.1 on the expiry of period of two months from today.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

12.02.2020
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No