

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

FAO-2759 of 2020

Date of Decision: 04.08.2020

Dhan Raj

....Appellant

Versus

Om Devi and another

....Respondents

**CORAM:HON'BLE MR. JUSTICE S.N. SATYANARAYANA
CORAM:HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Sanjay Panghal, Advocate
for the appellant.

S.N. SATYANARAYANA, J.(Oral)

The petitioner in case No.19 dated 23.07.2019 on the file of Additional Principal Judge (Family Court), Rohtak has come up in this first appeal impugning the order of interim arrangement made by the Court below on an application filed by the appellant herein for the interim relief of the custody of his minor son namely, Ishan.

The material on record would indicate that the marriage of the appellant and Neena Devi (Deceased) solemnized on 09.03.2007 and a child was born in their wedlock on 04.11.2009. The said child namely, Ishan was living with his mother throughout. The pleading in the appeal memo at paragraph No. 3 would indicate that

in the month of October, 2009 the deceased-Neena Devi left the company of the appellant alongwith minor child and they were residing in the paternal house of Neena Devi, where the deceased-Neena Devi and her child were taken care of by the mother of the Neena Devi-respondent No.1.

The record would also indicate further that on 03.01.2019 Neena Devi died in a road accident leaving her minor child in the custody of respondents as seen in paragraph No. 4 of the grounds of appeal. It is the custody of said child who is studying in 4th standard is the bone of contention in the proceedings before the learned Additional Principal Judge (Family Court), Rohtak in case No. 19 dated 23.07.2019, where the appellant herein has initiated proceedings under Section 7 of the Guardian & Wards Act for the custody of the minor son Ishan. In the said proceedings the Family Court has rejected his prayer for interim custody of minor child Ishan, while doing so it has passed concessional order , which reads as under:

“Heard. Application for interim relief is disposed off with a direction to the concerned School Authorities i.e. Saraswati School, Khararwar to let the petitioner Dhan Raj meet his child namely Ishan studying in 4th Class on every Firday so long as the child remains comfortable with him and as per the convenience of the school without disturbing his academic schedule.”

It is this order, which is under challenge in this

first appeal on the ground that the petitioner has a legal right to take the custody of the child. After going through the material available on record it is clearly seen that the child never had the occasion to live with the appellant, he always lived with his mother while she was alive upto January, 2019 alongwith the grand mother of minor child as well as its maternal uncle. It is in this background the learned Additional Principal Judge (Family Court), Rohtak has rightly felt that the custody of the minor child cannot be shifted immediately without consulting the child and without also looking into the matter in its entirety. More particularly when there is an allegation and accusation that the custody of the child is sought for the reason that the property of the mother would come to minor child it is for the sake of the property the appellant is seeking custody of the child.

The correctness or otherwise of that also will have to be considered by the Family Court. It is only after appreciation of all this question of entrusting the custody of minor child to his father or otherwise would come, therefore as a matter of right he cannot seek custody of the child when he has not bothered to seek the custody of the child from October, 2009 till the death of his wife in the year, January 2019. So under the aforesaid circumstance we find that impugned interim order passed by learned Additional Principal Judge (Family Court), Rohtak, is just and proper on the facts. Hence, no grounds are made to reconsider the order impugned. Accordingly, the present appeal is dismissed.

While dismissing, this appeal we also observe that the

family Court should take all care and concern to consult the child before passing appropriate order with reference to the right of the appellant seeking custody of his son.

Since notice is not issued to the respondents in this proceedings, a copy of this order is directed to be sent to the learned Additional Principal Judge (Family Court), Rohtak , where case No. 9 dated 23.07.2019 is pending with a direction to keep this order on the said file.

[S.N. SATYANARAYANA]
JUDGE

[ARCHANA PURI]
JUDGE

August 04, 2020
rashmi

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no