

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

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**FAO-3465-2019 (O&M)
Date of Decision: 15.10.2020**

Mafi Devi

...Appellant

Versus

Amar Nath and others

...Respondents

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

Present: Mr. Vikram Singh, Advocate, for the petitioner.

Mr. Shvetanshu Goel, Advocate, for respondent No. 1.

S.N. SATYANARAYANA, J. (Oral)

CM-8675-CII of 2020:

The present application has been filed under Section 151 of the Code of Civil Procedure seeking preponment of hearing of the main appeal.

With the consent of learned counsel for the parties, the present application is allowed and the main appeal is taken up on board today itself for final disposal.

CM-26093-CII-2019:

The present application has been filed by the applicant/1st respondent – Amar Nath, seeking to place on record his additional affidavit alongwith Annexures A-1 to A-4.

Allowed as prayed for. Accordingly, the additional affidavit, dated 28.11.2019, alongwith documents (Annexures A-1 to A-4) are taken on record.

FAO-3465 of 2019:

1. The present appeal has been filed by appellant-1st respondent in Petition No. 23 of 2018 (CIS No. GW-56 of 2018) on the file of Principal District Judge (Family Court), Karnal. The said proceedings were initiated by 1st respondent herein under Sections 9, 12 and 25 of the Guardian and Wards Act, 1890 (for short 'the Act'), seeking custody of the ward Master-Garvit son of late Shri Sunil Singh and grandson of late Shri Isham Singh.
2. In the said proceedings an application for interim custody of the minor was filed by the applicant - Shri Amar Nath son of late Shri Ram Sarup 1st respondent herein, which is under Section 12(1) of the Act. The same was contested by the appellant-herein, who was 1st respondent in the said proceedings and the same was decided on merits by impugned order dated 14.05.2019, which is sought to be challenged in this appeal.
3. Before proceeding further in this appeal, the relationship between the parties in this proceedings is required to be placed on record for clear understanding of litigation between them.
4. The petitioner in Petition No. 23 of 2018 (CIS No. GW-56 of 2018) Shri Amar Nath son of late Shri Ram Sarup is brother of late Shri Isham Singh. The said late Shri Isham Singh and his wife Smt. Siksha Devi had two sons by name, Surinder Kumar and Sunil Singh. Both sons of Isham Singh were married. The wife of Surinder Singh was Smt. Meenakshi Devi and the wife of second son Sunil Singh is Mafi Devi-1st respondent in Petition No. 23 of 2018 (CIS No. GW-56 of 2018) (appellant herein). The head of the family Isham Singh had two grand children, one through his son Surinder Kumar, namely, Daksh and another through his second son Sunil

Singh a minor Child by name Garvit. The said Garvit is the focal point of this litigation.

5. The records would disclose that the minor Garvit was born in the wedlock between Sunil Singh and Mafi Devi on 09.01.2011. When the said child was about one year old, the entire family of Isham Singh, which was traveling by car in Jammu and Kashmir met with an unfortunate accident, resulting in the death of Isham Singh, his two sons, namely, Surinder Kumar and Sunil Singh, and as well as the minor son Daksh born to Surinder Kumar. The records would further disclose that, the grand mother of Garvit, Smt. Siksha Devi W/o Isham Singh, though survived in the accident after coming to know the death of her husband, two sons and a grand son in the accident, died of heart attack. Thereafter the only surviving members of the family are minor Garvit, sole surviving grand child and two unfortunate widows one Smt. Mafi Devi (mother of Garvit) and another Smt. Meenakshi Devi (paternal aunt of Garvit).

6. The records would further disclose that immediately after the accident, the only person who responded to the crisis is the petitioner in Petition No. 23 of 2018 (CIS No. GW-56 of 2018), namely, Shri Amar Nath, who is the full blood brother of Isham Singh and a senior male member of Isham Singh's family. He attended the victims of the accident, namely, Mafi Devi, Meenakshi Devi and minor Garvit, took them to Karnal, which is native place of the parties, got them treated by spending several lacs of rupees from his personal funds and got them cured out of the injuries suffered in the said accident.

7. Admittedly, after one year of the accident, minor Garvit and his

mother Mafi Devi, who were residing alongwith Shri Amar Nath till then got shifted to Kaithal, which is the native place of Mafi Devi. By that time, her parents had deceased, she had no relative in the said place other than 3rd respondent in Petition No. 23 of 2018 (CIS No. GW-56 of 2018), namely, Shri Suresh Kumar, who is admittedly her first cousin. The records would disclose that minor Garvit and his mother resided in Kaithal from 2013 to 2016 for a period of nearly four years, where Minor Garvit, was admitted to Arya Public School, Chandlana, Block Pundri, District Kaithal, which is close to the house of Shri.Suresh Kumar. The records also indicate that minor son of Shri Suresh Kumar, who is of the age of Garvit, was also studying along with him in the same school, that the care and custody of Mafi Devi and minor son Garvit upto 2016 was at the hands of Shri Amar Nath, petitioner in Petition No. 23 of 2018 (CIS No. GW-56 of 2018) and as well as 3rd respondent Shri Suresh Kumar, who is none other than the cousin of Mafi Devi.

8. Admittedly, in the year 2016, Mafi Devi decided to get married for the second time, which was not opposed either by Amar Nath or Suresh Kumar, on the contrary they stood by her in her decision and assisted her to get married with 2nd respondent - Rajbir Singh son of Zile Singh, resident of Hathlana, District Karnal. The new marital home of Mafi Devi is in a distant place from the place where she was earlier residing, i.e. in District Kaithal. It is further seen that marriage between Mafi Devi - 1st respondent and Rajbir Singh - 2nd respondent in Petition No. 23 of 2018 (CIS No. GW-56 of 2018) was fruitful and they were blessed with a male child in their wedlock in the year 2017.

9. The record disclose that, minor child Garvit was abandoned by its mother Mafi Devi after her second marriage. That the said child was attended by its maternal uncle Suresh Kumar and paternal grand uncle Amar Nath, Petitioner, in Petition No. 23 of 2018 (CIS No. GW-56 of 2018) on the file of Family Court. It is further stated that, Late Isham Singh, paternal grandfather of Garvit was retired employee of Police Department, as such benefit of family pension was available to his dependent family members. Since minor Garvit being sole surviving dependent member of late Isham Singh, Amarnath his brother initiated proceedings to secure terminal benefits accruing to the estate of late Isham Singh and also monthly family pension to his only surviving dependent Minor Garvit from the employer of Late Isham Singh. Further it is seen that proceedings were also initiated by Amar Nath, under the Motor Vehicles Act, to secure compensation to minor child Garvit. The records would indicate that the entire proceedings for securing compensation for the minor child and also to monitor the proceedings before the authorities in securing family pension benefits to minor Garvit were attended by Amar Nath, as accepted by 3rd respondent - Suresh Kumar, who is none other than the first cousin and sole surviving relative of 1st respondent - Mafi Devi from her maternal family. It is also seen that all the money which was received for the benefit of Garvit is deposited in his name in bank and it is earning interest to him.

10. In the meanwhile, a joint petition, i.e. Petition No. 130 of 2016, under Sections 7, 10 and 15 of the Act, was filed by Amar Nath and Suresh Kumar, in the Court of District Judge (Family Court), Karnal, seeking to declare them as guardian to the minor child Garvit. In the said proceedings it

is seen that an averment is made that subsequent to the year 2016, when Mafi Devi decided to get married to Rajbir Singh - 2nd respondent in Petition No. 23 of 2018 (CIS No. GW-56 of 2018), abandoned custody of her minor son Garvit with her cousin Suresh Kumar and her late husbands paternal uncle Amar Nath. After her marriage with Rajbir Singh, she went alone to her new matrimonial house and started living with her second husband. It is also stated that her second husband was not inclined to accept minor Garvit in his family. It is in this background proceedings were initiated in the Court of District Judge (Family Court), Karnal, in Petition No. 130 of 2016, which was disposed off by judgment dated 23.02.2017, in appointing Amar Nath and Suresh Kumar as guardian to minor Garvit. An interesting thing seen in the aforesaid proceedings is the written statement filed by Mafi Devi on 15.02.2017, wherein at paragraph No. 8 she has stated as under:

“ After the solemnization of the re-marriage the answering defendant is unable to take care of minor child. The minor Garvit is being looked after by the petitioners who are family members. The answering defendant has no objection if the petitioners are appointed the guardian of the minors.”

11. The aforesaid statement clearly indicate that, Mafi Devi agreed to an order being passed appointing her late father-in-law's brother Amar Nath and her first cousin Suresh Kumar as guardian to her minor son Garvit. It clearly indicate that, she had no interest in taking care of the child. It is in this background, the said petition was allowed in accepting the statement of Mafi Devi that, minor Garvit will be taken care of by Amarnath and Suresh Kumar, who are close family members to the child and they were appointed as its guardians. It is on the basis of said judgment, dated 23.02.2017, in Petition No. 130 of 2016, and other material on record referred to supra, 1st

Respondent herein Amar Nath contend that the minor child continued in the custody of himself and Suresh Kumar upto 06.04.2018. It is contended that on 06.04.2018, Mafi Devi forcefully took the custody of minor Garvit and took him to Village Hathlana, District Karnal, where she is residing with her second husband Rajbir Singh. It is also stated that after taking the child to Hathlana, she was not taking good care of the child and she was beating the child and discriminated it, from her second child born in the wedlock with her second husband Rajbir Singh.

12. It is in aforesaid fact circumstances, petition in Petition No. 23 of 2018 (CIS No. GW-56 of 2018) was filed by Amar Nath invoking Sections 9, 12 and 25 of the Act, seeking custody of the minor child Garvit, which according to him was forcibly taken by Mafi Devi on 06.04.2018. In the said proceedings he also sought for interim custody of minor Garvit, which was vehemently opposed by the 1st respondent in the said proceedings Mafi Devi. The second respondent in the said proceedings is Rajbir Singh, he was duly served, entered appearance with his wife Mafi Devi and filed written statement along her in opposing the petition filed by Amar Nath for custody of minor Garvit. He also supported his wife Mafi Devi to oppose the application filed by Amar Nath seeking interim Custody of minor Garvith. In the said proceedings a counter claim was filed seeking to declare them as the guardians of minor Garvit.

13. Suresh Kumar-3rd respondent before Court below, who is the sole surviving relative of Mafi Devi from her maternal side, has filed his written statement, dated 02.04.2019, in Petition No. 23 of 2018 (CIS No. GW-56 of 2018), presently pending before the Principal District Judge

(Family Court), Karnal, and the relevant portion of which reads as under:

“6. That para No.6 of the petition is admitted to be correct being matter of record. However, it is submitted that it is the petitioner-Amar Nath who had proceed the entire case before the department as well as in the Hon’ble Court and with the assistance of Amar Nath, the minor Garvit is able to seek these service benefits of deceased Isham Singh.

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8. That in reply to para No.8 of the petition it is submitted that after the death of husband of respondent-Mafi Devi, she wanted to perform second marriage, but her second husband refused to take the company of the minor Garvit and thus it was decided that after the re-marriage, the minor Garvit shall be kept by the pettioner as well as respondent No.3 who are grandfather and maternal uncle of the minor Garvit and thereafter only with the consent and concurrence of the respondent-Mafi Devi, the petition for appointment of the guardian was filed on 04.10.2016. After remarriage, respondent No.1-Mafi Devi served all the relations with the family of the petitioner as well answering respondent No.3. In fact at the time of her re-marriage she abandoned the Master Garvit who was living under the care and custody of answering respondent No.3 and the petitioner who is real brother of deceased Isham Singh grandfather of the minor child along with respondent No.3 in the larger interest of the minor child have applied for guardianship of the minor Garvit. Moreover, on re-marriage of the respondent No.1, her husband was not willing to take the custody of the child and the respondent No.1 was also not interested in taking the child with her and in fact the child was abandoned and the petitioner who is real brother of grandfather of minor, has love and affection towards the minor child and took the custody of the child along with answering respondent who also happened to be real cousin of Mafi Devi and in the interest of the child he was kept in the company of answering respondent who has also having the school going child of the same age of Master Garvit and was kept at his residence.

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19. That para No.19 of the petition is admitted to be correct. It is correct that the minor is being discriminated in the

family of the respondent No.1 and 2 and he is also treated as a servant. The minor is being abused in the said village. The respondent No.1 is blessed with child and now she had no love and affection towards the minor and as such the minor is being treated stepply and that is why the custody of the minor is to be given either to the petitioner or to the answering respondent.”

14. In the proceedings before Family Court, an application for interim custody of minor Garvit was also filed by Amar Nath - petitioner in the said proceedings. The Trial Court by going through the entire material available on record and by making assessment of the documents, which are made available to it threadbare, has passed the impugned order dated 14.05.2019, in observing that the interim custody of minor Garvit is allowed in favour of Amar Nath - petitioner in the said proceedings, which is sought to be challenged by the appellant – Mafi Devi in this appeal on several grounds which are as under:-

- (i) Minor child Garvit has been in continuous custody and supervision of Mafit Devi, appellant - 1st respondent in Petition No. 23 of 2018 (CIS No. GW-56 of 2018), from the date of his birth on 09.01.2011 to this date and at no point of time the custody of the minor child was taken away from her.
- (ii) Amar Nath - petitioner before the Court below, as well as Suresh Kumar - 3rd respondent are two representatives, one from the family of appellant's first husband Sunil Kumar and one from her paternal side i.e. Suresh Kumar, who were appointed by the Panchayat, which was constituted prior to her second marriage in the year 2016, to ensure the future benefit of minor Garvit. It is at the instance of the Panchayat, a joint

petition in Petition No. 130 of 2016, under Sections 7, 10 and 15 of the Act was initiated before the Court of District Judge (Family Court), Karnal, by Amar Nath and Suresh Kumar. She would go to the extent of saying that the statement which was made therein was got prepared and she has affixed her signatures to that and she would also try to contend that at no point of time she had abandoned the child and she had taken the child with her after second marriage, to the house of 2nd respondent - Rajbir Singh.

- (iii) Mafi Devi-appellant would also contend that the petitioner Amar Nath, aged about 70 years, has three children, out of that two are settled abroad and one son is settled in Bombay. Most of the time Amar Nath would be traveling to the house of his children and spend more than six months abroad with his two children and he would hardly come to his native place to take care of the child.
- (iv) Giving custody of minor child to a person aged 70 years, who is not keeping good health and on continuous travel to visit his children, is not in the interest of minor Garvit, therefore, the interim order, dated 14.05.2019, passed in Petition No. 23 of 2018 (CIS No. GW-56 of 2018), is erroneous and the same is required to be set aside. The minor child being in her custody from the day of birth should be allowed to continue with her.
- (v) The appellant also allege that at no point of time minor child Garvit was in the custody of Amar Nath, who is brother of late

Isham Singh, nor with Suresh Kumar, who is 1st cousin of Mafi Devi – appellant, and the facts which are narrated by them in the petition are false and that at no point of time her second husband Rajbir Singh opposed custody of minor child Garvit with her and she would also state that he is supporting her in taking care of minor child Garvit.

15. Heard the learned counsel for both the parties, the counsel for Appellant Mafi Devi reiterated the grounds urged in the appeal memo, also asserted that, the pleadings in the proceedings before Family Court and objections raised in this appeal are false and concocted. Per contra the learned counsel for the respondent No. 1 - Amar Nath bring to the notice of this Court that the statement made by Mafi Devi-appellant is incorrect. First and foremost he would oppose this appeal on the ground of maintainability by reciting the relevant provisions of the Act, where Section 12 reads as under:

“12. Power to make interlocutory order for production of minor and interim protection of person and property.

- (1) The Court may direct that the person, if any, having the custody of the minor, shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.*
- (2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.*
- (3) Nothing in this section shall authorise-*
 - (a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in*

his custody with the consent of her parents, if any, or

- (b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.”*

16. He would also bring to the notice of this Court the relevant provisions of Section 47 of the Act, which deals with ‘*Orders appealable*’ and would try to contend that the impugned order dated 14.05.2019, is not an appealable order. Section 47 of the Act reads as under:

“47. Orders appealable. - An appeal shall lie to the High Court from an order made by a Court, -

- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or*
- (b) under section 9, sub-section (3), returning an application; or*
- (c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or*
- (d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or*
- (e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section; or*
- (f) under section 32, defining, restricting or extending the power of a guardian; or*
- (g) under section 39, removing a guardian; or*
- (h) under section 40, refusing to discharge a guardian; or*
- (i) under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians or enforcing the order; or*
- (j) under section 44 or section 45, imposing a penalty”*

17. Further he has relied upon Section 7 of the Family Courts Act, 1984 (for short, ‘the 1984 Act’), with reference to ‘jurisdiction’ as well as

Section 19 of the 1984 Act, which provide for filing of an appeal. The relevant provision of Section 19(1) of the 1984 Act reads as under:

“19. Appeal. - (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908(5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.”

18. By reciting these provisions, he would rely upon a judgment of High Court of Delhi rendered in the matter of **Colonel Ramesh Pal Singh v. Sugandhi Aggarwal**, MAT.APP.(F.C.) 211/2017 & CM APPL. 44390/2017, decided on 01.10.2019, and try to draw support that an order passed under Section 12 of the Act is not appealable before this Court and the right to challenge the same is not provided before the High Court. Even on merits he would try to pick hole in the facts narrated and ground raised in this appeal which are in the nature of accusation and allegation against the 1st respondent in this appeal.

19. Learned counsel for the 1st respondent - Amar Nath (petitioner before Trial Court) would rely upon the documents which are filed by Mafi Devi, appellant herein. The documents produced by her would indicate that minor child Garvit, studied in the Arya Public School, Chandlana, Block Pundri, District Kaithal, which is closest to the house of Suresh Kumar - 3rd respondent before Trial Court. The document which is produced by the learned counsel for Mafi Devi - appellant alongwith synopsis includes a School Leaving Certificate issued by the said School, for the academic year 2018-19, which would clearly indicate that Garvit was a student of the said

School up to 11.06.2018 on which day, said child was taken out of the School by securing School Leaving Certificate and thereafter the very same child was admitted to Partap Public School at Jundla, thereby clearly indicating that the child upto June, 2018 was in Kaithal and not in Jundla and it is only subsequent to June, 2018 the child was admitted to school at Jundla.

20. When this is seen in the background of averments made by Mafi Devi - appellant in earlier proceedings, namely, Petition No. 130 of 2016 and also written statement filed by Suresh Kumar in the present proceedings, i.e. Petition No. 23 of 2018 (CIS No. GW-56 of 2018), it will clearly indicate that Mafi Devi - appellant, after the death of her husband Sunil Singh and almost all other family members in a road accident which took place on 23.02.2012, resided for about one year with Amar Nath - 1st respondent in this appeal and in the year 2013 she along with minor Garvith shifted to Kaithal, where they were residing under the care and custody of Suresh Kumar - 2nd respondent in this appeal. The records would also disclose that Suresh Kumar has a minor son who is of the age of Garvit and both the children were attending same School while Garvit was residing in Kaithal under the care and custody of Suresh Kumar.

21. The allegation made by Amar Nath in Petition No. 23 of 2018 (CIS No. GW-56 of 2018), in indicating that on 06.04.2018 when he was out of country, minor child Garvit was forcibly taken out of the custody of Suresh Kumar, get credence by the School Leaving Certificate, which is produced by Mafi Devi herself in these proceedings, which clearly indicates that up to June, 2018 minor Garvit was studying at Kaithal. Admittedly after

re-marriage in April, 2016, Mafi Devi shifted herself to the house of Rajbir Singh - 2nd respondent before Trial Court, which is in Village Hatlana, Post Office Manjura, Tehsil and District Karnal, which is far away from Kaithal and besides this the averment of Mafi Devi in the written statement filed by her in proceedings in Petition No. 130 of 2016, as reproduced above, in stating that she has no interest in taking care of the minor child Garvit and he was in the custody of Amar Nath and Suresh Kumar from the date of accident, i.e. 23.02.2012, appears to be justified by the records which are produced by Mafi Devi.

22. In this proceeding, another serious allegation and accusation made by Amar Nath against Mafi Devi and Rajbir Singh is that with all difficulties he secured pension benefits to minor Garvit, which was regularly credited to his account. It is also brought to the notice of this Court that to ensure continuous payment of pension minor child Garvit was required to be produced before the Treasury. It is stated that, the same is not disbursed after April, 2018, when it is alleged that Mafi Devi had forcibly taken possession of minor Garvit from the custody of her cousin Suresh Kumar to that of her matrimonial house with Rajbir Singh. Though such serious allegations are made, she has not produced any document to oppose the same and that she has taken care to ensure that family pension is secured to the child at regular intervals. It is also seen that there are fixed deposits in the name of minor child which is earning interest quarterly where 20% of that is deducted as tax at source. It is stated, if only Income Tax Returns were filed for the relevant period the said tax could have been recovered from the authorities and it is stated that no attempt is made by Mafi Devi to file income-tax return of

Master Garvit. It is also seen that the necessary particulars i.e. PAN Card and other documents have not been furnished to the pension authorities and bank. When all these things are looked into in the background that Mafi Devi after the death of her husband Sunil Singh in the year 2012, has entered into wedlock with Rajbir Singh - 2nd respondent before Trial Court, as her 2nd husband in the year 2016 and that her marriage with Rajbir Singh is consummated happily resulting in another child to her womb through Rajbir Singh, it is not in dispute that until the birth of 2nd child to Mafi Devi, the custody of minor child Garvit continued with Suresh Kumar as could be seen from the record which is made available to the Court.

23. Under the circumstance, the accusation and allegation made by Amar Nath that minor child Garvit was forcibly taken from the custody of Suresh Kumar while he was abroad, appears to get credence from the said document and also the conduct of Mafi Devi in shifting the minor child from Arya Public School at Kaithal to Partap Public School at Jundala in the year 2018 clearly supports the said accusation on the part of Amar Nath. When all these things are looked into in the context of the written statement which was filed by Mafi Devi immediately after her marriage to Rajbir Singh, in a proceeding initiated by Amar Nath and Suresh Kumar jointly for the guardianship of the minor child, it is clear that the motherly instinct and all concern for care of minor child Garvit which was there in the year 2016, is replaced by greed for the money available with the child.

24. In the peculiar facts and circumstances, though we would not like to give any finding that the interest of minor child is not safe with Mafi Devi, we observe that the interest of child is taken care by Amar Nath and

Suresh Kumar right from year 2012 until 2018. Hence, this Court would observe that the first respondent Amar Nath, as brother of deceased Isham Singh, has taken the entire responsibility of saving the surviving members of his brother's family in an unfortunate accident, which had taken place on 23.02.2021; he has got them treated from spending huge amount out of his personal funds; he has spent several lacs in taking care of them and attending to their medical needs in Karnal; and thereafter also took care of Mafi Devi and her minor son. While doing so, Amar Nath has not neglected another daughter-in-law of his brother Isham Singh, namely, Meenakshi Singh wife of Surender Kumar, she was also taken care of by him. It is seen that both of them wanted to get married. He has supported them and stood by them and in the meanwhile, he has also assisted them in filing the claim petition for securing compensation on account of death of members of their family and ensured that the entire compensation awarded is safely deposited in the name of minor child Garvit without misappropriating any of that. Similar is the laudable conduct of Suresh Kumar in not showing any greed to get any portion of the money which has accrued to the benefit of minor ward Garvit from the estate of his grandfather late Isham Singh as well as by way of compensation in motor vehicle accident.

25. When Rajbir Singh - 2nd respondent before Trial Court, got married to Mafi Devi, he has not shown any inclination to take custody of her minor son from earlier marriage. It is only after a child was born to him and it *prima facie* appears that the monetary benefits, which are deposited in the name of Garvit, has drawn Mafi Devi and her husband to forcibly take custody of minor Garvit on 06.04.2018 and thereafter to ensure that he has

been in continuous custody of his mother.

26. Though there is a tall claim by Mafi Devi and her husband that they are taking care of the interest of minor child, it is clearly seen that they have not taken care to secure the pensionary benefits to minor ward on time bound basis and they have not even bothered to take the child before the authorities to ensure pension benefits are credited to his account continuously. They have also not taken any step to see that the tax deducted at source is recovered by filing returns at regular intervals. It is also seen that the appeal filed by them for custody of the minor child is only because of the assets.

27. During course of the arguments, learned counsel appearing for the first respondent Amar Nath would submit before this Court that the 1st respondent - Amar Nath, who is petitioner before the Court below, is ready and willing to settle a portion of property personally owned by him, which is not the property of his deceased brother Isham Singh, in the name of minor child Garvit, to show that he has no interest either in the asset of the child or the money which is standing in his name. On the contrary, his endeavour is to safeguard the interests and future prospects of the sole surviving male member of his deceased brother Isham Singh and that his life is not put to any kind of threat or discomfort at the hands of the appellant or her second husband out of greed of money, which appears to be just and proper.

28. In the facts and circumstances of the case, we are of the considered opinion that at the first instance, as contended by learned counsel for first respondent Amar Nath, this appeal itself is misconceived, inasmuch

as, the impugned interim order dated 14.05.2019, passed in Petition No. 23 of 2018 (CIS No. GW-56 of 2018), is not an appealable order, as observed supra and further supported by the judgment in the case of **Colonel Ramesh Pal Singh (supra)**. As such it is held that the appeal is not maintainable. Even otherwise on merits, when we look into the impugned order of learned Additional Principal Judge (Family Court), Karnal, it is seen he has taken maximum care to ensure the interest of the child as paramount in this proceeding. He has rightly declined to accept the defense raised by Mafi Devi - 1st respondent before the Court below and appellant herein, in contending that it is motherly instinct which should prevail in deciding custody of the minor child Garvit. It is seen that, said contention of Mafi Devi is rightly not favored as against the conduct of petitioner Amar Nath and Suresh Kumar - 3rd respondent. In the aforesaid circumstance, we are of considered opinion that the impugned order does not require interference even on merits.

29. Accordingly we find no grounds to interfere with the order impugned. Hence, appeal is dismissed.

(S.N. SATYANARAYANA)
JUDGE

(ARCHANA PURI)
JUDGE

October 15, 2020
Poonam Sharma/Pkapoor

Whether speaking/reasoned
Whether reportable?

Yes/No
Yes/No