

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

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Civil Revision No.2329 of 2020
Date of Decision: September 30th, 2020

Kaushalya Devi

...Petitioner

Versus

Sarabjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

Mr. Vipin Mahajan, Advocate
for the respondents.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this revision petition is to the order dated 21.09.2020 passed by the Principal Judge, Family Court, Gurdaspur, whereby an application under Section 12 of the Guardian and Wards Act, 1890, for interim custody of minor sons namely Harish aged 11 years studying in 5th standard and Samar aged 8 years studying in 3rd standard, filed by respondent No.1-Sarabjit Kaur, mother of the minors, during the pendency of a petition under Section 25 of the Guardian and Wards Act, 1890, for custody, has been allowed and interim custody of minor children has been ordered to be given to her directing Kaushalya Devi (grandmother of the minors)-petitioner herein.

2. Brief facts of the case are that respondent No.1-Sarabjit Kaur being mother of the minor children sought custody of her minor sons, referred to above, from Kaushalya Devi, who is aged more than 85 years, Ashok Kumar, elder paternal uncle of the children and Asha Rani, his wife.

3. Respondent No.1 was married to Atul Kumar on 15.03.2009. Two sons namely Harish and Samar, aged 11 years and 7 years respectively were born out of the wedlock. They were living happily. The minor sons were admitted in Guru Nanak International School, Gazikot and were studying in 7th and 3rd class respectively.

4. Father-in-law of respondent No.1 transferred the property in the names of the husband of respondent No.1 i.e. Atul Kumar and Ashok Kumar, brother-in-law of respondent No.1 in equal shares i.e. 6 acres each. Mutation was also sanctioned in the month of September 2019. Respondent No.1 along with her husband and children were living separately from the petitioner and *pro forma* respondents and prior to the death of her father-in-law and partition of the land, there was a joint *khata* and a tractor was purchased in the name of Ashok Kumar, elder brother of the husband of respondent No.1. Tractor was being used jointly by Ashok Kumar as also the husband of respondent No.1 namely Atul Kumar. After the death of the father-in-law, Ashok Kumar started forcibly ploughing and occupying the land of joint property leading to the dispute between the brothers including on the question of use of the tractor. There started quarrels between Ashok Kumar and husband of respondent No.1 Atul Kumar on these aspects leading to depression of Atul Kumar, who ultimately on 21.05.2020, committed suicide.

5. The blame was put on Sarabjit Kaur-respondent No.1 to grab the property and, therefore, FIR No.45 dated 21.05.2020 under Sections 306/34 IPC was got recorded by Ashok Kumar. The allegations against respondent No.1 were that it was because of strained relations between respondent No.1-Sarabjit Kaur and her husband Atul Kumar due to frequent

interference of the mother of respondent No.1 in their family affairs that Atul Kumar had committed suicide. After investigation, challan has been presented and the case is pending before the trial Court.

6. Respondent No.1, having been released on bail, had immediately filed the present petition seeking custody of the children. Petitioner being mother-in-law of respondent No.1, has, now approached this Court challenging the order dated 21.09.2020, where the application for interim custody of the minor children has been allowed.

7. It has been asserted by the counsel for the petitioner that the cause of death was the dispute and the frequent quarrel between respondent No.1 and her husband that the son of the petitioner went into depression and ultimately committed suicide. Not only was there interference on the part of the mother of respondent No.1 in the matrimonial affairs but the frequent demands by her, with an intention to give it to her parents and continuous niggling on her part that the son of the petitioner committed suicide. That apart, there had been extra marital relations of respondent No.1, which led to her son having taken the extreme step of committing suicide. The well being of the minors has to be given priority. The two minors are in safe custody of the petitioner, who has been taking care of them and even providing with all necessary amenities. It has been asserted by the counsel for the petitioner that all the allegations, which have been made by respondent No.1 with regard to grabbing the land of the minor children by Ashok Kumar, are without any basis. The minor children do not want to go with respondent No.1 and forcing the children to go with respondent No.1 would be harmful to the interest of the minors and, therefore, the impugned order dated 21.09.2020 cannot sustain and deserves

to be set aside.

8. On the other hand, learned counsel for respondent No.1 asserts that the allegation of illicit relations of respondent No.1 with someone else is a concocted story altogether. Referring to the FIR dated 21.05.2020, which has been registered on the statement of Ashok Kumar, he asserts that not a word has been mentioned with regard to the said aspect. What has been pointed out is only demand of ₹1,50,000/- by respondent No.1 from Atul Kumar, her husband, for giving it to her parents, which led to the quarrel. Nothing is there on record, which would indicate strained relations between respondent No.1 and Atul Kumar, her husband. Otherwise also, the Guardian Judge has himself interacted with the children and it is on the basis of the interaction that the said Court has formulated an opinion with regard to the status of the children in the hands of not only Kaushalya Devi-petitioner herein but Ashok Kumar, the elder brother of the deceased husband of respondent No.1. The Court had heard both the children in open Court in detail and has formulated an opinion that they were tutored and under the control of Ashok Kumar. Reading the faces of the children, the Court had opined that false allegations were being made by them against their mother under the influence of Ashok Kumar and Kaushlya Devi as they were not able to explain the things properly. Photographs have also been placed on record by respondent No.1 showing that the children and the parents were living peacefully and happily. The Guardian Judge has looked into each and every aspect and, therefore, having found respondent No.1 to be the most suitable person to take care of her children being the natural guardian, capable of financially also taking care of the children being employed as an Anganwari Worker with 10+2 qualifications, passed the

order, which being fully justified, does not call for any interference by this Court.

9. Learned counsel for the petitioner has relied upon the judgment of the Supreme Court as well as this Court to contend that the interest of the minors would be duly protected and preserved at the hands of the petitioner. Their interest is primarily to be looked into and given due weightage, rather this should be the basic consideration. The children are secure and safe in the hands of the grandmother and, therefore, the impugned order cannot sustain and deserves to be set aside.

10. Counsel for respondent No.1 has placed on record, through email, photographs showing the children, respondent No.1 and her husband happily staying together.

11. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the impugned order as well as the documents placed on record but do not find myself in agreement with the counsel for the petitioner.

12. As regards the allegations against respondent No.1 with regard to the loose character, the same appears to be an afterthought as in the FIR dated 21.05.2020 (Annexure P-5), there is no such allegation against respondent No.1. It is at a later stage that the allegations are made with regard to she having illicit relations with others. There is no reference with regard to any such act on the part of respondent No.1 at the initial stage, therefore, the said allegations at this stage cannot be accepted.

13. As regards the factum that the interest of the children has to be given precedence over other aspects, there can be no dispute for which the counsel for the petitioner has relied upon the judgments, referred to above,

but in the case in hand it is apparent that the Guardian Judge was best placed to assess the interest of the children, especially when he had taken pains to interact with the children. The observations of the Court, therefore, on interaction, cannot be ignored and overlooked. They have to be given credence and cannot be lightly pushed aside. The said comments of the Court are based upon the personal interaction by the Court with the children. When seen in the facts and circumstances of the present case, the same cannot be said to be totally unreasonable and unjustified. The reasoning assigned by the Court in these circumstances, cannot be said to be without any basis or uncalled for.

The Court has taken care to protect the financial and emotional aspect of the two minor children. There can be no dispute that the mother is the best person for minor children as it is with her that they are most attached. It has come in the pleadings that the two children, prior to the registration of the FIR, were residing separately with their mother and father as there were two different houses and, therefore, it is quite natural that the two children would be more close to their mother than to the grandmother, who is 85 years infirm lady or their uncle (*taya ji*).

14. Keeping in view the age of the minor children, the order dated 21.09.2020 as passed by the Principal Judge, Family Court, Gurdaspur, especially in the light of the fact that the interest of the minors is better protected at the hands of respondent No.1, who is not only educated but is working as an Anganwari Worker, apart from being a natural guardian, cannot be said to be in any manner faulty.

15. In the considered view of this Court, the order as passed by the Principal Judge, Family Court, Gurdaspur, being in accordance with law,

based upon the facts and circumstances of the case, do not call for any interference by this Court in exercise of its revisional jurisdiction.

16. The present petition, therefore, stands dismissed.

September 30th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No