

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

FAO No. 5500 of 2019 (O&M)

Date of decision : 10.02.2020

Sumitra

.... Appellant

Versus

Narender Phogat and another

... Respondents

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

Present : Mr. Sandeep Lather, Advocate for the appellant.

Mr. I. S. Saggu, Advocate for the respondent.

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DAYA CHAUDHARY, J.

Appellant Sumitra, the maternal grandmother (Nani) of minor child namely Khushal Phogat, being aggrieved by judgment and decree dated 06.08.2019 passed by the Principal Judge, Family Court, Panipat, whereby custody of the minor child has been granted to respondent No.1- father of the child, has filed the present appeal on various grounds stating that the impugned judgment is contrary to the facts and evidence and welfare of the child has not been taken into consideration.

Briefly, the facts of the case as made out in the present case, are that respondent No.1 Narender Phogat, got married with Manisha (now deceased) daughter of the appellant on 19.12.2013. Out of their wedlock, a son namely Khushal Phogat was born on 28.02.2015. Manisha, the mother of minor Khushal Phogat fell ill and expired on 22.03.2017 while admitted

in PGIMS, Rohtak. An FIR No.74 under Sections 304-B, 34 and 506 IPC was also registered in Police Station-Madlauda, Distt. Panipat against respondent No.1 and his other family members. Subsequently, they were found innocent in the investigation and cancellation report was filed by the investigating agency. After death of Manisha, the minor child remained with the maternal grandparents. Subsequently, respondent No.1-father of the minor child filed petition under Sections 7-10 and 12 of the Guardianship and Wards Act, 1890 seeking custody of the minor child, which was allowed vide impugned judgment and decree with a direction to the appellant-maternal grandmother to hand over the custody of the minor child to the father. However, the visitation rights were given to the appellant-maternal grandmother.

Learned counsel for the appellant submits that due to harassment and cruelty caused by respondent No.1, deceased Manisha, mother of the minor child, fell ill. She was admitted in the hospital and ultimately, she expired on 22.03.2017. Learned counsel also submits that an FIR was also registered against respondent No.1 and thereafter, a protest petition was also filed. Learned counsel also submits that parents of respondent No.1 are of old age. Respondent No.1 can remarry and as such, the welfare of the child has not been taken into consideration by the Family Court. Learned counsel further submits that the appellant is getting handsome pension and her son is also in government job. The welfare of the minor child can be looked after being joint family. At the end, learned counsel submits that the minor child has remained in the company of the appellant from the very beginning and to grant the custody at this stage would be contrary to the welfare of the child.

Learned counsel for respondent No.1 has opposed the submissions made by learned counsel for the appellant. He submits that the judgment of the Family Court is well reasoned and detailed findings have been recorded. By considering all aspects not only the welfare of the child but other factors, which are necessary for giving custody to the natural guardian, have also been taken into consideration.

Heard arguments of learned counsel for the parties. We have also perused the impugned judgment passed by the Family Court.

Facts of the case regarding marriage of respondent No.1 with Manisha-daughter of the appellant, birth of minor child, admission of deceased mother of minor child in the hospital, lodging of FIR against respondent No.1 and his other family members and thereafter, finding them innocent in the investigation, are not disputed.

Now the question for consideration by this Court is as to whether the findings recorded by the Family Court are based upon the welfare of the minor child as well as various other factors especially in case of custody of the child to be with the natural guardian *i.e.* father vis-a- vis the maternal grandmother.

The learned Family Court has framed the following issues : -

1. Whether the petitioner is entitled for the custody of his minor son, namely Khushal Phogat, as prayed for ? OPP
2. Whether the present petition is not maintainable in the present form? OPR
3. Whether the petitioner is estopped to file the present petition due to his own act and conduct? OPR
4. Whether the petitioner has no *locus standi* to file the present petition? OPR
5. Whether the petitioner has not come before this Court with

clean hands and has suppressed the true and material facts from the Court? OPR

6. Whether the petitioner has no cause of action to file the present petition? OPR

7. Relief.

Learned Family Court while considering the arguments of the parties allowed the petition filed by respondent No.1-father by recording that the father of the minor child has sufficient source of income to maintain the child. It has also been mentioned that there is proper atmosphere to maintain the child as the father is young and being the natural guardian of the child, can give more love and affection to the child. It has also been mentioned that the maternal grandmother of the child is old and her husband has expired. The maternal uncle is having his own family to look after and no proper care can be given to the minor. It has also been mentioned in the judgment that there was no complaint at the instance of deceased Manisha against her husband. In the criminal case, the allegations were found to be false and cancellation report was prepared and filed in the Court. Death of Manisha occurred due to tuberculosis while she was admitted in the hospital and much care was taken as proper treatment was provided to her.

In case of claim for guardianship between the parties, the court's power is to appoint the most suitable person among the contestants by taking into consideration the welfare of the child which is of paramount consideration. Before deciding the issue of permanent custody of the child, the Court is to take into account the totality of the circumstances under which the child is placed and consider whether entrustment of the child for the permanent custody would be in the interest of welfare of the child. In such circumstances, various factors are to be taken into consideration.

Admittedly, the father is the natural guardian of the child and in comparison to the maternal grandmother, the preference is to be given to the father.

While deciding the question of welfare of the child, the surrounding facts and circumstances are necessary to be taken into consideration because of tender age. It is also to be considered that the child should not be deprived of love and affection of the father which is required for the proper development of the mental health of the child. It is the interest and responsibility of the father for proper upbringing of the child and the same is necessary for the welfare of the minor. The object of giving custody of the minor to the natural guardian is necessary for the protection of rights of the minor, maintenance and education. The father, being the natural guardian, has a preferential right to the custody of his minor son in view of the facts and circumstances of the case as he is the person who is to take care of the well being of the child and is intelligent enough to understand and decide about not only the upbringing but for future as well. The child will be more secured and protected, socially and financially, in case the custody is given to the father.

The allegations made against the biological father can be correct in some of the cases but in the present case, the allegations have been found to be false and cancellation report has been accepted by the Court. Moreover, mere fact of registration of criminal case is not sufficient to deny the custody of the child to the natural guardian. The father of the minor is young in age and he is having sufficient financial resources including salary as he is working in government department *i.e.* in the office of the Director General of Audit (Post Telecommunication) at Delhi as a

Senior Auditor. His earning is more than ₹ 7,00,000/- per annum. Paternal grandfather of the minor is a retired Gazetted Officer and is getting handsome pension. The paternal grandmother of the minor is a housewife and can look after the child in a better manner. The child would not only get love and affection but he will be provided good education in case the custody is with the father.

Moreover, respondent No.1-father has not contracted second marriage and there are no chances that he will ignore the minor in any manner. Visitation rights have also been given to the appellant.

Accordingly, keeping in view the facts and circumstances of the case and the reasons as mentioned above, we find no reason to interfere with the findings recorded by learned Family Court and the appeal filed by the appellant is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

Dated : 10.02.2020
sunil yadav

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No