

HIGH COURT OF CHHATTISGARH, BILASPURFAM No. 71 of 2015

(Arising out of order dated 13-5-2015 passed by the Second Additional Principal Judge, Family Court, Durg, in Civil Suit No.84 of 2014)

1. Smt. Netrakala Gautam (Patle) W/o Shri Kailash Gautam Aged About 31 Years R/o House No. A-9, Sarvodaya Colony, C.T.O., Bairagarh, Bhopal, Tahsil And District-Bhopal, Madhya Pradesh.

---- Appellant

Versus

1. Om Gautam, S/o Shri Kailash Gautam Aged About 11 Years a Minor Through His Natural Guardian Shri Kailash Gautam
2. Kailash Gautam S/o Shri Bharatlal Gautam Aged About 40 Years

Both R/o Village Khamariya-Bhata, Near Chikhli Nala, Durg, Tahsil And District-Durg, Chhattisgarh

---- Respondents

For Appellant	Mr. B.P. Sharma, Advocate with Ms Anuja Sharma, Advocate
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For Respondents	Mr. Vikas Dubey, Advocate
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Hon'ble Mr. Prashant Kumar Mishra, J.
Hon'ble Mrs. Rajani Dubey, J.

Judgment on Board
By
Prashant Kumar Mishra, J.

22-01-2021

1. Appellant would call in question the legality and validity of the impugned order passed by the Family Court dismissing her application for custody of minor son, however, at the same time, she has been allowed to live with her minor son for 15 days during summer vacations and further that she can meet her son once in a

month on a holiday for a period of three hours at a park or hotel or a public place.

2. Out of appellant's wedlock with the respondent No.2 Kailash Gautam, the son, respondent No.1 Om Gautam was born on 30-5-2003. Appellant's prayer for custody of the minor was earlier dismissed by the Family Court, Durg on 8-7-2013.
3. In the present application she alleged that the respondent No.2 has married with one Ritu Patle during subsistence of the first marriage, therefore, the welfare of the minor would not be served, if he remains in custody of the respondent No.2. She alleged that after performing second marriage the respondent No.2 is not taking care of the minor and he is deprived of motherly love and affection of a natural mother, which would impact his mental growth and since the appellant is serving as Nurse at Hamidia Hospital, Bhopal (Madhya Pradesh), she is able to take proper care and upbringing of the minor.
4. The respondents were proceeded *ex parte* before the trial Court.
5. In her statement before the Family Court, the appellant reiterated the plaint allegations to submit that she is working as Staff Nurse from 2012, however, before that she was dragged out to the matrimonial house in February, 2010. The respondent No.2 has performed second marriage, therefore, the welfare of the minor lies if he is placed in appellant's custody.
6. In his examination before the Court, minor Om Gautam deposed that his father and grandmother are taking proper care, therefore, he does not want to live with the appellant. The family Court has given importance to the desire of the minor and has also considered that his interest is properly taken care by his father, therefore, he being 11 years of age, his interest lies in remaining in the custody of father.

7. It is settled by the Supreme Court in a catena of decisions one of the recent being in *Sheoli Hati v Somnath Das*¹ that while considering prayer for appointment of guardian, the paramount consideration is always welfare of the Child.
8. Having considered the submissions raised by the learned counsel for the appellant and on examination of the record, it appears the minor son of the appellant namely; Om Gautam was born on 30-05-2003. Thus, he would attain the age of majority on 30-05-2021 i.e. in about four months time. This appeal remained pending since last more than five years and the appellant has not come forward with any such development pointing out ill treatment at the hands of the respondent No.2 or the step mother of respondent No.1. In such a situation it is difficult to comprehend at this stage that the interest of the minor is not taken care of properly by the respondent No.2.
9. Even otherwise, if the minor attains the age of majority, it would be his wish & will, independent of law, to live either with his mother or father. In absence of any material showing that welfare of the minor is compromised when he is in custody of his own father, we are not inclined to interfere with the order impugned passed by the learned family Court.
10. As an upshot, the instant appeal, *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bare their own costs.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Rajani Dubey)
Judge

Gowri

¹ (2019) 7 SCC 490