

IN THE HIGH COURT OF ORISSA AT CUTTACK
GUAP No. 1 OF 2018

Ashok Kumar Patra

....

Appellant

Mr. S. Mohapatra, Advocate

-versus-

K. Rabindra Patra and others

....

Respondents

Mr. Suryakanta Dash, Advocate
(For Respondent Nos.1 and 2)

Mr. Ajodhya Ranjan Dash,
Additional Government Advocate
(For Respondent No.3)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
04.08.2022

Order No.

7. 1. This matter is taken up through hybrid mode.
2. The Appellant in this appeal seeks to assail the judgment and order dated 25th November, 2017 passed by learned Judge, Family Court, Nayagarh in C.P. No.36 of 2017, whereby an application filed by the Appellant under Sections 6 and 13 of the Hindu Minority and Guardianship Act, 1956 read with Sections 6, 8 and 13 of the Guardian and Wards Act, 1890 to appoint him as the legal guardian of the child and handover her custody has been rejected.
3. It is submitted by Mr. Mohapatra, learned counsel for the Appellant that the marriage between the Petitioner and one Sunita Patra was solemnized on 25th November, 2013 and they blessed with a female child, namely, Alisha on 30th November, 2014. Due to the unnatural death of his wife, namely, Sunita Patra, the Appellant is facing trial under Section 302 I.P.C. along with allied offences in connection with Daspalla P.S.

Case No.200 of 2015. The case is pending for trial. After release of the Appellant on bail, he filed the aforesaid application (C.P. No.36 of 2017) for being appointed as the guardian of the child as well as to take her custody. The said application being rejected, is under challenge in this appeal.

4. Mr. Mohapatra, learned counsel for the Appellant further submits that after the Appellant was arrested in connection with the aforesaid criminal case, the custody of the child was handed over to her maternal grandparents. Since then, she is residing there. The Appellant had filed the aforesaid application as the child is deprived of love and affection of her father. The Appellant is ready and willing to take care and responsibility of the child and will look after her welfare. As the Appellant is the natural guardian of the child, the custody ought to have been handed over to him. Learned Judge, Family Court being swayed away by the fact that the Appellant has been involved in a criminal case of murder of his wife, refused to grant the relief sought for. He, however, submits that the right of visitation has been allowed to the Appellant and the Appellant is regularly visiting his daughter. In that view of the matter, he prays for setting aside the impugned order and to hand over the custody of the child to the Appellant.

5. Mr. Das, learned counsel for the Respondents submits that the child is with her grandparents, when she was eleven months old. Hence, she should not be removed from the atmosphere and condition where she is growing up. No allegation of any torture or ill-treatment to the child has been

made by the Appellant. In fact, the child is living happily with her grandparents. She is now a school going child. The Appellant is involved in a criminal case, that too murder of his wife. He was in judicial custody. But being released on bail, he has filed the aforesaid application. Since the welfare of the child is the paramount consideration, she should stay with her grandparents. Thus, learned Judge, Family Court, Nayagarh has committed no error in refusing the prayer of the Appellant to appoint him as the guardian and handover the custody of the child to him. He, therefore, prays for dismissal of the appeal.

6. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the impugned order, it appears that the Appellant is involved in a criminal case. He has been released on bail during pendency of the criminal trial. At this juncture, if the child is handed over to the Appellant, it will not only amount to remove the child from a condition where she has grown up, but also likely to adversely affect her mental and physical growth. She may also suffer trauma for putting her in a condition to which she will be completely alien. Law is well settled that the child should not be removed from a condition where she has grown up if the condition is not detrimental to the child's welfare. Further, welfare of the child is the paramount consideration and not the right of the parties to claim custody of the child.

7. Considering the facts and circumstances of the case and more particularly, the fact that there is no allegation that the custody of the child with her grandparents is detrimental to her welfare, this Court is of the considered opinion that learned

Judge, Family Court, Nayagarh has committed no error in refusing the application filed by the Appellant.

7. Accordingly, this appeal being devoid of any merit stands dismissed.

8. It is, however, observed that the Appellant may renew his prayer in accordance with law, in the event fresh cause of action arises after acquittal of the Appellant in the criminal trial, if any.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge



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