

IN THE HIGH COURT OF ORISSA AT CUTTACK
GUAP NO. 1 OF 2016

Bhagyalaxmi Das ***Appellant***
Mr. Sidharth Pasad Mishra, Advocate
-versus-
Sankar Das and others ***Respondents***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
27.07.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. The Appellant being the natural mother of minor child (son) has filed this appeal under Section 47 of the Guardians and Wards Act, 1890 (for short 'the Act') assailing the judgment dated 20th May, 2016 passed by learned Judge, Family Court, Khurda in C.P. No. 25 of 2015, whereby the Respondent No.1 (Sankar Das) has been appointed as guardian of the minor son (Kumar Debtosh) under Section 7 of the Act. The Respondent No.1 was also directed to comply with the undertakings given by him in the joint affidavit under Ext.1 within a period of three months from the date of taking over the custody of minor son.
3. This Court while issuing notice in the matter vide order dated 13th June, 2016, as an interim measure, directed stay operation of the impugned judgment dated 20th May, 2016 passed by learned Judge, Family Court, Khurda in C.P. No. 25 of 2015 till next listing of the case. Subsequently, the Respondent Nos.1 and 4 filed an application to allow them to visit their minor grandchild and to take steps for treatment of his deformed right leg. Considering such application, this Court

after hearing learned counsel for the parties vide order dated 5th May, 2017 has passed a reasoned order, which reads as under:

“This is an application filed by the respondent nos.1 and 4 to allow them to visit their minor grandchild and to take step for treatment of his deformed right leg.

2. The appellant is the daughter of respondent nos.1 and 4. She had married respondent no.2 and out of their wedlock Kumar Devtosh @ Nikhil was born. Devtosh @ Nikhil presently aged about seven years is residing under the care and custody of the appellant.

These respondent nos.1 and 4 claim that the minor male child was earlier residing with them after dissolution of the marriage of the appellant with respondent no.2. So the respondent no.1 has been appointed as the guardian of the male child. He with his wife, i.e. respondent no.4, therefore, be allowed to keep the minor male child with them so as to provide proper treatment for his deformed right leg which he is not getting and that according to them is not possible at Saumyaguda (Patraguda) in the district of Malkangiri. So, they say that they would take the responsibility for advanced medical treatment. It is also stated that because of proper treatment, the deformity has stepped up.

3. Learned counsel for the respondent nos.1 and 4 submitted that the male child be given in custody of the respondent nos.1 and 4, so that they can take his proper care and give treatment as is necessary for his deformed right leg.

4. Learned counsel for the appellant submitted that the minor son of the appellant is now happily residing with the appellant and respondent no.3 at Malkangiri; where he is reading in a Convent School. He contends that Nikhil is now having no such problem on his right leg and it has been cured. He further submitted that the minor is now leading a normal life, playing; running etc and still the appellant and respondent no.3 are taking him for medical checkup.

According to him, it is a peculiar case where maternal grandfather and mother of the minor male child are bent upon taking away the child from the custody of mother i.e. parents are interest to deprive their daughter of the custody of her minor son. He also submits that many a times the respondent no.1 and 4 have been going to Malkangiri and disturbing the peace

of the family life of appellant even by going to the extent of lodging FIR at the police station based on falsehood.

5. Fact remains that these respondents 1 and 4 are now residing at Khurda which is at a great distance from Malkangiri where the appellant, respondent no.3 and minor child Nikhil are residing. Documents shown during hearing reveal that Nikhil is reading in Convent School at Malkangiri and being taken for medical checkup in Government Hospitals.

Parties being present in Court, were called to my Chamber. Nikhil came with the appellant. He stated to have come all the way with the appellant and the respondent no.3, with his younger brother, meaning thereby the son born through the wedlock of appellant and respondent no.3. He ventilated no problem/inconvenience/difficulty during his stay at Malkangiri and also stated to have been properly taken care of by his mother and father, meaning respondent no.3. He also stated to be presently experiencing no difficulty in his right leg.

5. Respondent nos.1 and 4 however insisted that they be given custody of the minor male child so that they would keep him with them and treat him.

Learned counsel for the respondent nos.1 and 4 when submitted that for the interest of the minor male child, he be kept with the respondent nos.1 and 4, it is refuted by the learned counsel for the appellant that when the minor male child is residing happily with the appellant and has absolutely no problem in any front as also since he is prosecuting his study with no such health problem at present, it would have serious adverse impact on his mind and may come as a shock if so forced to come to stay with the respondent nos.1 and 4 who are fifty five plus where certainly he would stand deprived of motherly love and affection which at this age and time is the absolute need.

Moreover, when the prayer is to have a visitation right, the purpose clearly appears to take custody of the minor child for treatment which at present does not appear to be a need and that would cause very many such unexpected situations again having adverse impact on the child.

Considering the submissions made, the facts and circumstances as discussed and viewing all those in their proper prospective at present, I do not find any

justification to pass any such interim order on the prayer made in this misc. application.

6. *The Misc. Case is accordingly dismissed."*

4. Mr. Mishra, learned counsel for the Appellant submits that this Court while considering the interim application for a visitation right to Respondent Nos.1 and 4, who are maternal grandparents of the child, has discussed the matter in detail and opined that removal of the child from the custody of the present Appellant would certainly have adverse impact on his mind and may come as a shock if so forced to come to stay with the Respondent Nos.1 and 4, who are fifty five plus where certainly he would stand deprived of motherly love and affection which at this age and time is the absolute need. He, therefore, submits that the interim order be made final.

5. None appears for the Respondents at the time of call although they are represented through their learned counsel.

6. Heard learned counsel for the Appellant and perused the order dated 5th May, 2017 passed by this Court.

7. On perusal of the order dated 5th May, 2017, it transpires that the collateral Bench while dealing with the interim application has passed a reasoned order and opined that welfare of the child can be best achieved, if he will be with his mother.

8. In view of the above, I accept the submission of Mr. Mishra, learned counsel for the Appellant and make the interim order dated 5th May, 2017 passed in Misc. Case No.1 of 2017 absolute.

The GUAP is accordingly allowed.

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

bks

(K.R. Mohapatra)
Judge

