

IN THE HIGH COURT OF ORISSA AT CUTTACK

GUAP NO. 2 OF 2019

Rabinarayan Tah

.....

Petitioner

Mr. S. Sahoo, Advocate

-versus-

Tusarkanta Mohanty and others

....

Opp. Parties

Mr. Brahmananda Tripathy, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

01.08.2022

Order No.

9. 1. This matter is taken up through hybrid mode.
2. This appeal has been filed assailing the order dated 26th April, 2019 passed by learned District Judge, Jagatsinghpur in Guardian Petition No.2 of 2015, whereby an application filed by Respondent No.1 under Sections 7 and 8 of the Guardians and Wards Act, 1890 (for short 'the Act') for being appointed as guardian of the minor child, namely, Smruti Priyadarshini, was allowed.
3. Upon hearing learned counsel for the parties and on perusal of the record, it appears that the minor child was about 10 years old at the time of filing of the petition. Mr. Sahoo, learned counsel for the Appellant submits that learned District Judge, Jagatsinghpur while adjudicating the petition did not take into consideration the scope and ambit of Section 6 of Hindu Minority and Guardianship Act, 1956. He also drew attention of this Court to the operative portion of the impugned order at paragraphs-10 and 11, which reads as under:

"10. I am convinced that dislocation of Smruti, at this stage from the house of petitioner No.1 where she has

grown up sufficiently in good surroundings would not only impede her schooling but also it may cause emotional strain and depression to her. Thus, having bestowed my anxious consideration to the material on record and the observation made by His Lordship & considering the circumstances and bearing in mind the paramount consideration of the welfare of the child, I am of the opinion that it is not felt desirable to disturb the custody of Smruti Priyadarshini and further I am convinced her custody and welfare will be best served, if she continues to be in custody of petitioner No.1. Accordingly, I am of the view that in the present case, there is no ground to upset the prayer of the petitioner No.1. There is nothing on record to suggest that the welfare of the minor is in any way in peril in the hands of petitioner No.1. Rather in my opinion, the stability and security of the child is also an essential ingredient for a full development of child's talent and personality in addition to the consideration of welfare of the child.

11. Thus, having considered the facts & circumstances of the case and going through the evidence led to that effect having known the wish and intelligent preference of petitioner No.2, after personal interaction with her keeping in view ratio of the afore cited case and above all the requirement of law regarding welfare of the minor (petitioner No.2) being the paramount consideration, while deciding for appointment of guardian, I am of the view that the petitioner No.1 is the suitable person to be appointed as legal guardian of minor girl Smruti Priyadarshini (petitioner No.2) to safeguard the interest and welfare of the minor who has got no adverse interest against the minor. Hence, it is ordered."

A prayer is made by learned counsel for the Appellant for setting aside the impugned order and to remit the matter back to the learned District Judge, Jagatsinghpur for fresh adjudication of Guardian Petition No.2 of 2015.

4. Mr. Tripathy, learned counsel for the Respondents submits that in few months, the minor child will attain her majority. From her childhood, she was with her mother, who

was residing with Respondent No.1, her brother. After her death, the child is with her maternal uncle-Respondent No.1. The child has never seen her father, the present Appellant. During interaction of the Court, the child has also expressed her desire to stay with her maternal uncle. Thus, interfering with the impugned order at this stage will certainly impede the welfare of the child. He, therefore, submits that the impugned order warrants no interference.

5. Taking into consideration the rival contentions of the parties, this Court finds that the child was about 10 years old at the time of filing of Guardian Petition No.2 of 2015. Thus, she is about 17 years old at present. From her birth, the child was residing with her mother, who was staying with her brother (Respondent No.1). After death of her mother, namely, Mamata Mohanty, the child is residing with her maternal uncle (Respondent No.1). The maternal uncle is also taking care of the child from his own expenses. On perusal of the impugned order, it is apparent that the child has expressed her desire to stay with her maternal uncle and refused to go to her father. In that view of the matter, interference with the impugned order at this stage will certainly impede the welfare of the child and also her academic career. She may have mental shock, if she is removed from Respondent No.1. It also appears that the child will be major in few months.

6. Thus, this Court without delving into the merits of the submissions made by learned counsel for the parties and sustainability of the impugned order disposes of the appeal with

an observation that the Respondent No.1 shall be the legal guardian of the child till she attains her majority.

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

(K.R. Mohapatra)
Judge

bks

