



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 49 OF 2021

01 Maroti s/o Hanmantu Uppalwar,
age: 64 years, Occ: Agril.,
R/o Near Dattari Bazar Bela,
Tq. Mandal Bela, District
Adilabad, Telangana State.

02 Ramakka w/o Maroti Uppalwar,
age: 57 years, Occ: Household,
R/o Near Dattari Bazar Bela,
Tq. Mandal Bela, District
Adilabad, Telangana State.

Appellants

Versus

Neha w/o Dattatraya Uppalwar,
age: 26 years, Occ: Household,
R/o Near Datari Bazaar Bela,
Tq. Mandal Bela, District
Adilabad, Telangana State.
At present R/o Renapur,
Tq. Bhokar, District Nanded,
through C/o Ramchandra
Mariba Babhale, Renapur,
Tq. Bhokar, District Nanded.

Respondents

Mr. Rahil R. Kazi, advocate holding for Mr. Ganesh A. Gadhe,
advocate for the Appellants

Mr. Santosh C. Bhosle, advocate for the Respondent.

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on : 22nd January, 2024

Pronounced on : 21st February, 2024

JUDGMENT :

1 The appellants, who are original non applicants in Misc. Civil Application (RJE) No. 20 of 2019, have challenged the judgment and order dated 07.02.2020 in the aforesaid application, whereby they are asked to hand over custody of minor children namely, Akshara and Pranavi to present Respondent i.e. original applicant and mother of the aforesaid children. The said order has been passed by the learned trial Court i.e. District Judge-1, Bhokar, who has also allowed the present appellants to meet the children by giving 24 hours' prior intimation.

2 The background facts are as under:

 The appellants are respective grand father and grand mother of minor children Akshara and Pranavi, who are the daughters of their son Dattatraya, who admittedly died on 07.05.2019. After the death of Dattatraya, the appellants received Court notice about the aforesaid application filed by the respondent, who is their daughter-in-law and mother of the minor daughters, under Sections 6 and

8 of the Hindu Minority and Guardianship Act, 1956, for declaration of guardianship and custody of minor daughters. The learned trial Court passed the impugned judgment allowing the said application and directing the appellants to hand over custody of both the minor children immediately to the Respondent. Hence, this Appeal.

3 The learned Counsel for the appellants vehemently argued that the impugned judgment and order is definitely erroneous, as it is passed only by considering natural guardianship of the minor daughters and not considering factual aspects of the case, such as financial position of the Respondent and welfare of the minor daughters. According to him, the learned trial Court has also erred in holding that the Respondent, being natural guardian of the minor daughters, is entitled for custody. The learned Counsel, in support of his submissions, relied on the following judgment:

- (1) **Gaytri Bajaj Vs. Jiten Bhalla**, reported in 2013 AIR SC (Civil) 77;
- (2) **Sheoli Hati Vs. Somnath Das**, reported in 2019 AIR (SC) 3245

4 On the contrary, learned Counsel for the Respondent-mother supported the impugned judgment and pointed out that the learned trial Court has already reserved visitation rights to the appellants and thereby maintained balance of convenience between the parties in respect of emotional aspects.

5 Heard rival submissions and also perused the documents on record along with the impugned judgment and order.

6 The relationship between the parties is not disputed. The Respondent mother, in her application, has claimed that she was ill-treated by her husband as well as appellant no.1 under the influence of liquor and all the members of family of her husband were passing remarks against her as she gave birth to three daughters. According to her, after the death of her husband due to heavy consumption of liquor and ill-treatment received by her, she brought all three daughters to her parental house. According to her,

Ramchandra Mariba Babhale, who is her father, possesses 10 to 12 acres of land and also does the work of Contractorship. According to her, her father is having registration for taking contracts up to Rs. One crore and, therefore, she is able to maintain her daughters without help of appellants.

7 On the contrary, reply filed by the present appellants before the learned trial Court indicates that the Respondent is not having any independent source of income to maintain the minor daughters since her father does not possess any contract license and the agricultural land is also not in his possession but is in the possession of brothers of the Respondent, who reside separately. According to them, they are maintaining the grand daughters by giving them proper education after the death of their son Dattatraya.

8 On perusal of the impugned judgment and order, it appears that the learned trial Court has given custody of minor daughters to the Respondent because she is natural guardian and welfare of minor daughters can be protected by her which, in fact, is of paramount consideration.

9 In the case of **Gaytri Bajaj Vs. Jiten Bhalla** (*supra*), the Hon'ble Apex Court has observed that while deciding custody of minor child, the issue must be decided from the angle of welfare of child and not the better right of parents and issue of welfare of minor child is of ultimate consideration. There is no dispute about such observation, but in the case of **Gaytri**, the Hon'ble Apex Court was considering the dispute between husband and wife. However, in the present case, it is the dispute between grand parents and mother of the minor children. Though the learned trial Court has not made any discussion about financial capability of the rival parties for giving better future to the minor daughters, but besides making averments, the present appellants did not produce any supporting evidence about their financial status. Moreover, it appears that they are senior citizens above the age of 60 years at present. On the contrary, the Respondent has specifically averred in the application that her father possess sufficient land and is also a contractor having license to execute works up to Rs. One crore. Therefore, considering the age factor of the appellants,

it can safely be inferred that the present Respondent can maintain minor daughters better than the present appellants and can take care that the minor daughters would get proper facilities in future to develop themselves in all respects.

10 Considering all these aspects, the impugned judgment and order passed by the learned trial Court appears just and proper in the circumstances of the present case and, therefore, no interference is required at the hands of this Court.

11 In the result, the Appeal From Order stands dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

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