



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-4447-2022 (O&M)
Date of decision 24.07.2024

Kulwinder Kaur and anr.

....Appellants

VS.

Ranjodh Singh and anr.

...Respondents

**CORAM: HON'BLE MR JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Amit Sharma, Advocate, for the appellants.

Sureshwar Thakur, J. (Oral)

1. The grand parents of the minor daughter (Kamalpreet Kaur) namely Ranjodh Singh and Surinderpal Kaur-respondents herein filed a petition under Section 25 and 10 of the Guardians and Wards Act, 1890 before the learned Family Court, whereby they claimed qua relief for custody of minor child-Kamalpreet Kaur, who was born out of the wedlock of co-respondent No. 1 (appellant No. 1 herein) and Amrinder Singh (since deceased), thus becoming retrieved to them from the respondents therein.

2. After the demise of Amrinder Singh, co-respondent No. 1 (appellant No. 1 herein) solemnized marriage with co-respondent No. 2 (appellant No. 2 herein). The daughter born out of the wedlock of co-respondent No. 1 (appellant No. 1 herein) and deceased Amrinder Singh, is also stated to be living happily along with appellants herein. After the demise of the former husband of appellant No. 1, the parents of the deceased opted to institute the petition (supra) before the learned Family Court and the



learned Family Court concerned after dismissing the petition (**supra**), thus proceeded to preserve liberty to the grand parents (respondents herein) to meet the minor child Kamaldeep Kaur, on last Sunday of every month from 4 p.m to 6 p.m. However, it was observed that they shall not disturb and disrupt her normal studies and other activities. The operative portion of the verdict made in the petition (**supra**) becomes extracted as under:-

“In view of the reasons recorded above, the petition being bereft of any merits stands dismissed. However, the petitioners are at liberty to meet with the minor child Kamaldeep Kaur on last Sunday of every month from 4 p.m to 6 p.m. But the petitioners shall not disturb and disrupt her normal studies and other activities. Memo of costs be prepared. File be consigned to the record room.”

3. It is the above operative part of the verdict made on the petition (**supra**) that has led the aggrieved appellants to institute the present appeal before this Court. It appears that despite the fact that though in the operative part of the verdict (**supra**) the learned Family Court proceeded to decline the relief (**supra**) to the respondents herein but the appellants become aggrieved even with respect to conferment of visitation rights, upon, the petitioners (respondents herein).

4. In the instant appeal, despite valid service being caused upon the respondents, yet they have not appeared before this Court, thus they are proceeded against ex parte.

5. The minor Kamaldeep Kaur born out of the wedlock inter se co-respondent No. 1 in petition (**supra**) and deceased Amrinder Singh, in respect of whose custody, an entrenched legal battles has been initiated by her grand parents against the appellants herein, thereons the learned family



Court concerned before passing any verdict in the petition (supra) concerned, _____imperative was required to elicit the willingness of the said minor daughter about the material fact qua whether she intends to live with her grand parents or she intends to continue living with the present appellants. Moreover, it also became incumbent upon the learned Family Court to gather from the facts available on record, besides to make the elicitation from the said minor daughter qua whether her well-being in all respects, thus would be better cared at the instance of the respondents before this Court or at the instance of the present appellants. However, it appears that the above solemn duty remains completely undischarged. Therefore, this Court yet as *parents patriae vis a vis* the minor daughter, thus proceeded to ask the present appellants in whose custody, she is now lodged to ensure theirs causing her appearance before this Court, so that thereby this Court may proceed to elicit from her, her willingness to stay in the company of the present appellants or her _____reclines to stay in the company of her grand parents. Moreover, this Court also proceeded to elicit from the minor daughter qua whether the present appellants are taking optimum care of all her needs towards education, food, clothing and other incidental expenses.

6. Therefore, this Court asked the minor daughter to testify before this Court but without oath and proceeded to record her statement, which reads as under but only after this Court gauging her intelligibility, thus for subsequently declaring her to be a _____ witness.

“Statement of Kamalpreet Kaur daughter of Late Sh. Amrinder

Singh, residents of Village Dholan Majra (near Morinda), P.O

Morinda, Tehsil Chamkar Sahib, District Ropar.



I am studying in Class X in Garden Vally Internation Sr. Secondary School, Kurali. I am aged 15 ½ years. My Biological mother i.e Kulwinder Kaur and step father-Surinder Singh are taking optimum care of all my needs relating to my education, food, clothing and other expenses. Therefore I can state before this Court that I intend to live in the company of both (supra). I, at this stage, firmly believe that all my interests besides my well-being would be fully protected and groomed in the company of the appellants. I further state that my grand parents namely Ranjodh Singh and Surinderpal Kaur are pressing for theirs being conferred visitation rights, despite the fact that I do not at this stage intend to meet them. However, as and when I intend to meet them, then I shall through a mobile phone, which shall be purchased for me by the appellants, make a communication to my grand parents about the time and venue where they should come and interact with me.”

7. The petition (**supra**) was instituted at the instance of the grand parents, thus seeking custody of the minor child Kamalpreet Kaur. It appears that the present appellants had solemnized marriage on 31.03.2014 and the grand parents just to harass the appellants and the minor child-Kamalpreet Kaur thus instituted the present petition. The above inference gets further strengthened from the factum that though the son of the respondents herein expired in the year 2011 yet they filed the petition (**supra**) subsequently making to deprive the biological mother of the minor daughter, from grooming and fostering her. Consequently, therebys it appears that the grand parents are trying to somehow or the other wreck the



mental peace of the appellants besides trying to disrupt the psyche of the minor daughter.

In consequence, after this Court having functioned as *parents patriae vis a vis* the minor daughter, and, through her statement *supra*, her willingness to stay with the appellants, affirms the verdict (*supra*), but declines the conferment of visitation rights to the respondents, granted by the learned Family Court qua the minor daughter. The said order is but modified to the extent that if in terms of the statement made today, thus the minor daughter evinces her willingness to meet her maternal grandparents, thereons the respondents may interact with her (minor daughter). The statement of the minor daughter be made part of the modified decree. Thus the instant appeal is disposed of.

6. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

24.07.2024
G Arora

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No