

2024-PHHC-129954-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4542-2024 (O&M)
Date of decision: 23.09.2024

AJIT SINGH PAHRA & ANR ...Appellants
Versus

MANDEEP KAUR PAHRA & ANR ...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Jagdish Singh Mahal, Advocate,
for appellants.

SUDHIR SINGH, J.

Challenge in the present appeal is to the order dated 07.05.2024, passed by the Learned Additional Principal Judge, Family Court, Gurdaspur (for short 'the Family Court'), whereby the petition under Section 25 of The Guardians and Wards, 1890 filed by the appellants for the custody of their grandchildren, was dismissed.

2. The appellants, being the grandparents of the minor children, had filed the aforesaid petition for their custody, inter alia, pleading therein that they had retired from respectable positions and enjoyed good reputation in the society. It was further pleaded that their only son, namely, Hardeep Singh married respondent No.1- Mandeep Kaur in 2010 and out of the said wedlock, two children were born. In 2015, respondent No.1 (their daughter in-law) pressurized the appellants and their son to settle in Canada on PR basis, whereas the

son of the appellants was serving in BSNL at Gurdaspur as TTA and was well settled. As the respondent No.1 was not willing to live in the company of the appellants, therefore, in order to buy peace, the appellants had supported her financially for her settlement in Canada and spent Rs.20,00,000/- from their own pockets. On 29.07.2015, respondent No.1 along with her late husband left for Canada. On 29.10.2015, the appellants received the news of the sad demise of their only son in an accident. It was further pleaded that after the death of their only son, respondent No.1 started avoiding them. She had kept the minor children at some unknown place at the behest of respondent No.2-Gian Singh. It was further pleaded that the appellants had apprehensions that respondent No.1 would be solemnizing a second marriage, leaving the future of the minor children in dark. It was further asserted that the appellants, being the grandparents of the minor children, should be granted the custody of the children.

3. Notice was issued to the respondent No.1 but she did not appear and was accordingly proceeded as ex-parte.

4. Respondent No.2 appeared and filed written statement, stating therein that the custody petition was not maintainable as the children were in the lawful custody of their mother (i.e. respondent No.1) at Canada. It was further stated that respondent No.1 along with her children was legally entitled to their respective shares in the property inherited by late Hardeep Singh (husband of respondent No.1). It was further stated that as the appellants wanted to alienate the property/share belonging to the late husband of respondent No.1, therefore, she was compelled to file a civil suit for declaration and

permanent injunction at Gurdaspur and the parents had concealed the said facts in the custody petition.

5. On the basis of pleadings of the parties, the following issues were framed by learned Family Court:-

- “1. Whether petitioner is entitled for the custody of minor child as prayed for? OPP
2. Whether the petitioner is not maintainable in its present form? OPR
3. Relief.”

6. In evidence, appellant No. 1 examined himself as PW-1, besides tendering into evidence Mark-P1 On the other hand, respondent No.2 appeared as RW-1.

7. The learned Family Court, after taking into consideration the rival contentions of the parties and the evidence on record, has dismissed the petition filed by the appellants.

8. Learned counsel appearing for the appellants has vehemently argued that the appellants had incurred expenses of a huge amount of Rs.20,00,000/- for settlement of respondent No.1 at Canada. However, respondent No.1 after the death of the only son of the appellants, has not only deprived the appellants of the love and affection of their grandchildren, but she has broken all ties with the appellants. It is further submitted that respondent No.1 is all set to solemnize a second marriage and therefore, the custody of the children was required to be handed over to the appellants.

9. We have heard learned counsel for the appellant and have also gone through the impugned order passed by the learned Family Court.

10. The question that arises for consideration by this Court is whether the order passed by learned Family Court, requires any interference.

11. As would appear from a perusal of the impugned order, the learned Family Court has found that the allegations levelled by the appellants are in respect of the personal disputes of the parties and there was no evidence or material on record to indicate that respondent No.1 was not capable to take care of the minor children. It was further found that in his cross-examination, it was admitted by appellant No.1 that respondent No.1 along with the children returned to Canada in September, 2016 and she had incurred the expenses for herself and the children, which meant that respondent No.1 was financially capable to look after and bring up the children in a proper manner. It was further deposed by appellant No.1 in his cross-examination that though the minor children had filed a civil suit through their mother, yet if they joined company of the appellants, they were ready to give them their share in the property. It was, thus, found by the learned Family Court that the appellants were putting pre-condition upon the children to live in their company in India. It was further found that appellant No.1 stated in his cross-examination that he had filed a suit with the Government of Canada claiming 50% of the accidental claim on account of the death of Hardeep Singh being his parents and it was very surprising as to how he was laying his claim over the said 50%, especially when the children had preferential right to claim the same. The reliance of the appellants on compromise Mark P1 dated 02.04.2021 was disbelieved by the

learned Family Court as it was found that the said compromise was allegedly executed during the pendency of the custody petition and if appellants were so honest, they ought to have withdrawn the custody petition. It was further found that the respondent No.1 was not signatory to the said document and, thus, it could not be read against her.

12. Apart from the findings recorded by learned Family Court, which we do not find to be illegal or perverse, it may be noticed that admittedly the children are residing with their mother at Canada. The petition for custody of the minor can only be maintained before a Court within whose territorial jurisdiction the minor is residing. As the minor children are admittedly residing at Canada, the custody petition filed by the appellants at Gurdaspur would not be maintainable.

13. No other point has been urged.

14. In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.

15. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

23.09.2024
Himanshu

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