

2024/PHHC/136227-DB



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

FAO-4767-2024 (O&M)
Date of decision: 04.10.2024

Beenu

.....Appellant

Versus

Maya Ram and others

.....Respondents

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

Present: Mr. D.S. Nigha, Advocate, for the appellant.

SUDHIR SINGH, J.

Present appeal is directed against the order dated 10.07.2024 passed by the learned Principal Judge, Family Court, Ambala, whereby the petition under Section 25 read with Section 12 of the Guardians and Wards Act, 1890 (for short 'the Act') and Sections 6 and 13 of the Hindu Minority and Guardianship Act, filed by the appellant for the custody of the minor children, was dismissed.

2. The aforesaid petition had been filed by the appellant, *inter alia*, pleading that her marriage with Gurdhian Singh @ Dhyana was solemnized on 30.08.2014 as per Hindu rites. Out of the said wedlock, two children were born on 21.09.2015 and 08.12.2016 respectively. On 19.05.2019, her husband got accidentally electrocuted with the wires of the

electric pole at Sampat Filling Station, Ambala and he died at

the spot itself. In this regard, a criminal case bearing FIR No.95 dated 19.05.2019 under Section 304-A IPC was lodged at Police Station, Sadar, Ambala. It was further stated that after the death of her husband, she had been turned out of the matrimonial home by her in-laws and that they had also forcibly taken the custody of both the minor children. It was further pointed out that the children were not safe in the custody of the in-laws of the appellant.

3. Upon notice, the respondents entered appearance and filed their written statement stating therein that the petition filed by the appellant was barred by *resjudicata* as she had earlier filed a similar petition in the Court at Amloh, District Fatehgarh Sahib, which was withdrawn on 24.09.2019 without assigning any reason. The marriage of the appellant with Gurdhian Singh @ Dhyana was admitted and the factum of the birth of the children was also admitted. It was further stated that respondent No.3 was living separately from respondent Nos.1 and 2 and he was unnecessarily dragged into the litigation by the appellant just to mentally and physically harass him. It was further pointed out that the appellant had been in relationship with some other person and in this regard, various *Panchayats* had been convened, but to no avail. It was yet further asserted that the appellant had left the matrimonial home by taking along all valuables and ornaments besides, cash amounting to Rs.10,000/- without the consent of respondent Nos.1 and 2 by leaving behind the

minor children. Even thereafter, the *Panchayats* were convened on 17.03.2019 and 21.04.2019, but the appellant had refused to accompany respondent Nos. 1 and 2. It was also pointed out that on 31.05.2019, the appellant moved a complaint/application to the police at Naggal, for the custody of the children, intentionally and deliberately in order to blackmail respondent Nos.1 and 2, but a compromise in this regard, was entered between the parties wherein, she stated that she did not want to take the custody of the children. It was lastly, asserted that the children are admitted in the school of repute at Kurukshetra.

4. On the basis of the pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether the petitioner is entitled to custody of minor Yxx and Mxx on the grounds mentioned in the petition? OPP
2. Whether petition is not maintainable? OPR
3. Relief.”

The parties led their respective evidence.

5. After hearing the rival contentions of the parties and considering the evidence on record, the learned Family Court dismissed the petition filed by the appellant, as noticed above.

6. As would appear from the impugned order, the children are aged about 08 and 09 years respectively and the learned Family Court had interacted with them. The children had categorically stated that they wanted to live with their grant-parents and that they were fulfilling their requirements and they did not want to go with their mother (Beenu). It was,

thus, found that the children are intelligent enough to choose their preferences and they could not be compelled to go with their mother. It was, thus, found that the children have bonding with their grandparents and, therefore, they cannot be uprooted from their company.

7. It is settled law that while considering the custody matter of the children, their paramount welfare should be the sole consideration. The Hon'ble Supreme Court in **Sheoli Hati v. Somnath Das, (2019) 7 SCC 490**, while laying emphasis on the paramount welfare of the child in the custody matters, held as under:-

“17. It is well settled that while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. This Court in *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42 : (2009) 1 SCC (Civ) 1, had the occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed. This Court referred to English Law, American Law, the statutory provisions of the Guardians and Wards Act, 1890 and provisions of the Hindu Minority and Guardianship Act, 1956, this Court laid down following in paras 43, 44, 45, 46 and 51 (SCC pp. 55-57):-

“43. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the “welfare of the child” and not rights of the parents under a statute for the time being in force.

44. The aforesaid statutory provisions came up for consideration before courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of

minor children by into account their interest and well-being as paramount consideration.

45. In *Saraswatibai Shripad Vad v. Shripad VasANJI Vad* [*Saraswatibai Shripad Vad v. Shripad VasANJI Vad*, 1940 SCC OnLine Bom 77 : ILR 1941 Bom 455 : AIR 1941 Bom 103, the High Court of Bombay stated :

‘... It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. *It is the welfare of the minor and of the minor alone which is the paramount consideration ...*’

46. In *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840 , this Court held that object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The *power* and *duty* of the court under the Act is the welfare of minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.

XX XX XX

51. The word “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parents patriae* jurisdiction arising in such cases”.

8. If, the findings recorded by the learned Family Court are examined in light of the law laid down by the Hon’ble Supreme Court in the aforesaid judgment, it would be clear that the children are happy in the company of their grand-

parents. There is no material or evidence on record to show

that they are not safe in the company of the grandparents. Moreover, the learned Family Court, while dismissing the petition filed by the appellant had granted her the visitation rights. The relevant part of the said order is as under:-

“37. As a sequel to findings on issue no.1, the present petition fails and is hereby dismissed, with no order as to costs. However, as the petitioner is the mother of the minor children, therefore, for proper growth of the children, it is essential that the children should have some interaction with the mother, who is not having their custody. Accordingly, visiting rights are granted to the petitioner for meeting the minor children twice in a month. It is ordered that the respondents will produce the minor children on first and third Saturdays of every month in the office of District Legal Services Committee, Ambala, for a meeting with the petitioner. The petitioner will meet the minor children in the presence of a Mediator/Legal Aid Counsel to be appointed by the learned Chairman, District Legal Services Committee, Ambala, from 3.00 P.M. to 4.00 P.M. In case, the said Saturday is holiday, then the respondent would bring the minor children on the next working day from 3.00 P.M. to 4.00 P.M. A copy of this judgment be sent to the learned Chairman, District Legal Services Committee, Ambala for necessary compliance. Memo of costs be prepared accordingly. Fine be consigned to the record room, after due compliance.”

9. We find that the order passed by the learned Family Court is just and equitable order. It could not be pointed out that any evidence has been misled or not taken into consideration. It is not a case, where the mother has been deprived of the love and affection of the minor children. Rather, the grant of visitation rights, has facilitated her meeting the children and create a bonding with them.

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

11. All pending applications (if any), shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

04.10.2024
Ajay Prasher

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