

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 324 OF 2012.

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|-------------------------------------|---|------------------------------|
| 1. Shri Parshuram Vasant Pareet, |] | |
| Age : 39 years, Occ: Service, |] | |
| 2. Sou. Laxmi Vasant Pareet |] | |
| Age : 51 years, Occ: Housewife |] | |
| 3. Shri Vasant Ganpat Pareet |] | |
| Age : 63 years, Occu: Agriculturist |] | |
| All R/o. Karambali, Tal. Gadhinglaj |] | |
| District : Kolhapur. |] | <u>...Appellants.</u> |

Versus

- | | | |
|---|---|------------------------------|
| Sou. Aruna Parshram Pareet |] | |
| Age : 29 years, Occ: Housewife, |] | |
| C/o. Shri Ashok Bhima Pareet |] | |
| R/o. Konali, Tal. Aajra, Dist. Kolhapur |] | <u>...Respondent.</u> |

Mr. Nagesh Chavan for Appellant.
None for Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 3rd February, 2025.

Oral Judgment :

1. The present First Appeal is at the instance of original Respondents in Miscellaneous Civil Application No. 28 of 2011 filed by Respondent-mother under Section 6(9) of the Hindu Minority and Guardianship Act, 1956 read with Section 7 of the Guardians and Wards Act, 1890 for seeking custody of two minor sons aged about 4 years old

and two and half years respectively.

2. The Application for custody of both the children pleaded that the Respondents had subjected the Applicant-mother to harassment and on 14th August, 2011, forced her to leave the matrimonial home pursuant to which, she was forced to reside in her parents' house. It was further pleaded that she was not permitted to take the children with her and they were forcibly kept by the Respondents-original Appellants.

3. The Respondent-Appellant No.1-husband did not file his say to the Application and Application was only resisted by Appellant Nos. 2 and 3, who are the paternal grandparents of the children alleging that Respondent herein had left the house voluntarily, by leaving the children behind.

4. The Trial Court framed the necessary issue as regards the better person to take care of the children. The Trial Court considering the tender age of both the children and the fact that it is a mother who is in a better position to take care particularly, when the Appellant No.1 was in military service and would be out of house, granted the custody to the Respondent-mother.

5. Learned counsel appearing for Appellant would point out that the impugned judgment was passed in the year 2011 and presently, elder son is aged almost 17 years and younger son is aged almost 15

years. He would further submit that only by considering that the Appellant No.1 being in service was not better placed to take proper care of children had granted the custody of children to the mother in view of the tender age of children.

6. The following point arises for determination:

(i) Whether in the paramount interest of the children, the custody of both the children is required to be given to the Respondent-mother?

As to Point No.1:

7. It cannot be disputed that considering the tender age of children when the Application was filed, it was only the mother who could have taken care of children. It was a specific case of Applicant-mother that on 14th August, 2011, she was forced to leave the matrimonial home, by leaving the children behind and therefore, the Application came to be filed. There was no Written Statement filed by Appellant No.1, who was father of the child and in absence of any submissions by Appellant No.1-father, the Trial Court has taken into consideration the evidence of the mother and has accepted the same.

8. The Trial Court refused to accept the case of Appellant Nos.2 and 3 that Respondent No.1-mother has voluntarily abandoned the children. Considering the tender age, the Trial Court has considered that welfare of children would be better met if the custody is handed over to Respondent-mother. There was no material which was placed

on record to demonstrate that Respondent No.1-mother is not entitled to custody of children or that in the interest of welfare of children the custody should be given to father.

9. As there is no material to disturb the findings of the Trial Court, the point is answered in favor of Respondent No.1-mother. The First Appeal being devoid of merits, stands dismissed.

10. It is further clarified that by impugned order, what was granted was the permanent custody of children, and Appellant No.1 being father can always move the Application for access of children. The said Application, if filed, will necessarily have to be decided on its own merits and in accordance with law.

11. In view of dismissal of First Appeal, nothing survives for consideration in pending Interim/Civil Applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]