

2025:PHHC:030848-DB



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

FAO-1450-2025 (O&M)

Date of Decision: March 04, 2025

Padam Chand and another

.....Appellants

versus

Govind Ram

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. Jarnail Singh Saneta, Advocate for the appellants.

SUDHIR SINGH, J.

Challenge in the present appeal is to the order dated 28.01.2025 passed by the learned Principal Judge, Family Court, Camp Court at Punhana (for short 'Family Court'), whereby, a petition under Guardian and Wards Act, 1890 (for short 'Act') filed by the appellants for the custody of the minor children, namely, Bhumi and Nandni, was dismissed.

2. The aforesaid petition had been filed by the appellants being grand-father and father, respectively, for the custody of the minor children. Respondent No.2 in that petition was given up. It was alleged that the appellants were residing at *Hat Bazar* Punhana along with their family members and the respondents (maternal grandparents of the minor) had taken the minors to their residents at Nuh when the appellants had been pursuing a false case. It was further alleged that the mother of the minors, namely,

Rajbala @ Rajni had already expired. The respondents were not providing basic facilities to the minors and that they had no source of income so as to take proper care of the minors. It was further alleged that respondent No.1 was busy in running the shop and he had no time to take care of the minor children. Both the respondents were infirm and old aged persons. On the contrary, the appellants were running two shops at Punhana and they had good source of income. Father of the minors was a Government teacher. Accordingly, custody of the minors was sought for.

3. Upon notice, respondent No.1 entered appearance and filed his reply. It was pleaded that minor children were in the custody of their real aunt (*chachi/ mausi*, namely, Smt. Mamta), who was wife of Pankaj (real brother of appellant No.2 and son of appellant No.1). It was denied that minors were residing with respondent No.1. It was yet further asserted that the minors were living in lawful custody of their *mausi/ chachi*. It was also pointed out that the appellants along with Pankaj had murdered the mother of the minor children, and in this regard, FIR No.237 dated 09.07.2020, under Sections 323, 498-A and 302 IPC was registered against the appellants and the case was still pending. During course of proceedings before the learned Family Court, respondent No.2 was given up vide order dated 18.08.2021.

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

- “1. Whether the petitioner is entitled to get custody of the minor children namely Bhumi and Nandni? OPR
2. Whether the present petition is not maintainable? OPR
3. Relief.”

5. In evidence, the appellants examined Bijender Singh as PW1 whereas they had examined themselves as PW2 and PW3, besides examining

Sahid as PW4, and had also tendered documents Exhibits P1 to P3 and Mark A to Mark F. On the other hand, respondent No.1 examined himself as RW1 and had also tendered documents R1 to R3 and Mark R4 to R22.

6. Learned Family Court, after taking into consideration the rival contentions and evidence on record, has dismissed the custody petition, as noticed above.

7. Learned counsel appearing on behalf of the appellants, while asserting the impugned order, argued that the impugned order passed by the learned Family Court is legally unsustainable inasmuch as while passing the impugned order, learned Family Court has totally ignored that the appellants are the grandfather and father of the minors and that they are the best persons to look after and take care of the minor children. It is also argued that while passing the impugned order, learned Family Court has totally ignored that respondent No.1 has no sufficient sources of income to provide basic necessities to the minor children. It is further argued that the minor children are not in the custody of Mamta, and rather, it is respondent No.1, who had custody of the children. It is also argued that while appearing as RW2 (Mamta) in her cross-examination deposed that her marriage with Pankaj was performed on 13.12.2017, and that on 30.12.2017, she gave birth to a male child. It was further deposed by her that her marriage with Pankaj (real brother of appellant No.2 and son of appellant No.1) was performed after about 06 years of marriage of her sister, namely Rajni and that if there had been any incident of harassment in respect of deceased Rajni alias Rajbala, she would not have been married to said Pankaj.

8. We have heard learned counsel for the appellants and have also gone through the impugned order.

9. The only question that requires consideration by this Court is whether the impugned order passed by learned Family Court requires any interference by this Court.

10. Learned Family Court has found that appellant No.2 was facing the trial regarding the alleged murder of his wife (mother of the minors). It was further found that both the appellants had admitted in their testimony that they had not spent any money regarding the maintenance of minor children. On the basis thereof, it was found that the appellants were not willing to spend any money on the minor children without taking their custody. It was also noticed by the learned Family Court that an application for interim custody moved by the appellants was dismissed by the Court after having interaction with the minor children, who had specially stated that they did not want to stay with the appellants, and that they were being taken well care of by their aunt (*mausi*). It was also observed that before the start of the arguments, the minors were present in the Court and the Court had interaction with the children. They stated that they were happily living with Mamta (*mausi/chachi*) and they further told that their mother was murdered and they did not want to reside with their father and grandfather. It was thus, concluded by the learned Family Court that preference of the children to reside with their aunt, namely Mamta and the respondents must be respected. It was further found that when the matter was tested on the anvil of welfare of the minors and the comparative resources of the parties, emotional attribute involved in

the case, only one conclusion appeared inevitable, and accordingly, learned Family Court declined to disturb the custody of the minor children.

11. While deciding the case of the custody of the children, the Court is to take into consideration the paramount welfare of the children. In **Sheoli Hati v. Somnath Das, (2019) 7 SCC 490**, while laying emphasis on the paramount welfare of the child in the custody matter, it was held by the Hon'ble Supreme Court 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 taking 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.*

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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”.*

12. Thus, we do not find any illegality or perversity in the findings recorded by the learned Family Court.
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

(SUKHVINDER KAUR)
JUDGE

March 04, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No