

Gopal Prasad Mathuria Vs. Angoori Devi

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Court : Allahabad

Decided On : May-14-1991

Reported in : I(1992)DMC176

Judge : B.L. Yadav, J.

Acts : [Guardians and Wards Act, 1890](#) - Sections 25; Hindu Minority and Guardianship Act, 1955 - Sections 6

Appeal No. : F.A.O. No. 546 of 1991

Appellant : Gopal Prasad Mathuria

Respondent : Angoori Devi

Advocate for Def. : Nemo

Advocate for Pet/Ap. : R.N. Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

B.L. Yadav, J.

1. This is plaintiff's First Appeal From Order directed against the order dated 24.4.1991 passed by Family Court Agra rejecting the plaintiff's application under Section 25 of the Guardians and Wards Act (for short the Act) and Section 6 of

Hindu Minority & Guardianship Act.

2. The factual matrix is that the appellant and respondent being husband and wife, lived together and the wife gave birth to two sons namely Rabikant and Raghubir, but now they (the wife and husband) are living separately. The sons are with the mother. The father, appellant moved application for the custody of sons which was contested by the mother, the respondent, on the ground that since the appellant has remarried Smt. Munni Devi, in case the sons are given to the custody of father, the sons would get step-motherly treatment which would naturally affect welfare of the children. After considering facts, circumstances of the case and evidence on record, Family Court held that welfare of the children was with the mother hence the application of the husband was rejected. Against this order present appeal has been filed.

3. Learned Counsel for the appellant urged that the welfare of the children is more in the custody father than the mother and the appellant is in better financial position to maintain the children hence the impugned order was erroneous.

4. Having heard learned Counsel for the appellant, I am of the view that both the children namely Rabikant and Raghubir were aged about 12 and 10 years respectively as such minors, hence the Court deciding their custody has taken their welfare as primary consideration. Even the framers of the Constitution, were conscious about the welfare of the children. Article 15(3) enables the State to make special provisions for children and women Article 45 (forty five) provides that child upto 14 years age shall be entitled to free education. Article 39(f) provides that State shall provide facilities and atmosphere to the children to develop in healthy manner. These provisions reflect that the Constitution makers were conscious for safeguarding the interest of children in the country. The children are very important asset of the country and the Government has evolved a national policy for the welfare of the children.

5. No doubt, in the present case father was in a better financial position but in view of Section 25 of the Act and Section 6 of Hindu Minority and Guardianship Act, the welfare of the children was supreme. It is the welfare of the children which has to be kept in mind before passing an order directing custody of the children from the

mother to be given to the father. The allegation of the mother, opposite party was that the applicant the father of the children has married one Smt. Munni Devi consequently the children would be facing behaviour of the step-mother. The Family Court has taken into consideration the welfare of the children. The respondent Angoori Devi is the natural mother of the children. The applicant, the father has to supervise the maintenance of the children by their step-mother as alleged by the respondent. There is overwhelming evidence on the record to indicate that the opposite party made application for restraining the husband from remarrying Smt. Munni Devi and there appears to be some compromise but when the father remarried, the natural mother brought the children with her and was living separately with them.

6. In *Veena Kapoor v. Varinder Kumar Kapoor*, (1981 (3) S.C.C. 92) it was held that in deciding matters concerning custody of minor children, main consideration of the Court must be welfare of the children and not legal right of particular party.

7. In *H.S. Dolikuka v. T.G. Dolikuka*, (A.I.R. 1984 SC 410) Section 25 of the Act came up for consideration and there also father was seeking custody of the child on the ground of happiness and welfare of the child but as the father was found not to encourage the child to settle down in the Boarding institution where child was continuing her studies, whereas the mother was held uniformly to encourage the child to settle down in the Kimense High School, their lordships of Supreme Court ruled that father was not interested in the happiness and welfare of the child. In the present case also it is the mother who is more concerned with the welfare of the children, whereas the father even though in better financial position but as the children has to face the behaviour of step mother, consequently welfare of the children is safe in the hands of respondent, the real mother.

8. Under these circumstances, considering welfare of the children, it is better that they are permitted to remain with the mother. The appeal accordingly lacks merit and is dismissed summarily.