

Mt. Shyama Vs. Shankar

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Court : Allahabad

Decided On : Apr-23-1935

Reported in : AIR1935All840; 158Ind.Cas.421

Appellant : Mt. Shyama

Respondent : Shankar

Judgement :

Allsop, J.

1. The appellant Mt. Shyama is said to be a minor about 17 or 18 years of age. She was married to the respondent Shanker. The latter made an application that he should be appointed guardian of Mt. Shyama and that she should be placed in his custody under Section 25, Guardians and Wards Act. The learned Judge does not appear to have intended to pass any order on the subject of appointing Shanker as the guardian of the minor, but he has passed an order that she should be delivered up to Shanker whom he treats as her natural guardian.

2. The appellant is now living with her father Sukh Lal. She was married to Shanker in the year 1929 and lived with him unhappily for a period of about three months. She then went home to her father and stayed with him for three years. In the meanwhile there were a series of panchayats and eventually the respondent appeared at one of these in December 1932. He promised not to ill-treat the girl and was fined a small sum of money. The girl was then returned to his custody.

Soon after, it was found that he had again been ill-treating her and he and his father were both fined in a criminal Court for wrongfully confining her in a room.

3. In these circumstances it does not appear to me that it can be said that it is to the interests of the minor to be given into the custody of this man. The Judge has considered the rights of Shanker in this matter. I must emphasise that the leading principle in dealing with a minor under the Guardians and Wards Act is to, look to the interests of the minor himself. If those interests are not affected in any way, it then may be considered whether any other person has, under the law to which the minor is subject, certain rights of custody or so forth. But those rights in other persons cannot be enforced unless the well-being of the minor is not affected by such enforcement.

4. The question here is not of the rights of the husband Shanker which he can enforce if he wishes to do so, by instituting a suit for the restitution of conjugal rights, but of the benefit and welfare of the minor. The minor was very nearly of full age and she stated quite definitely that she did not wish to live with her husband. Her wishes should be respected as far as possible. There is no reason for supposing that her welfare is not perfectly safe in the hands of her father in whose custody she at present is. In these circumstances it seems that the order of the Court below was not justifiable. I therefore allow the appeal and reject the application of the respondent who will pay the costs of the appellant.