

Vivek Kumar Vs. Ashok Kumar and ors.

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Court : Allahabad

Decided On : Jul-15-2002

Reported in : AIR2003All202

Judge : Bhanwar Singh, J.

Acts : Consitution of India - Article 226

Appeal No. : Writ Petn. No. 202 (HC) of 2002

Appellant : Vivek Kumar

Respondent : Ashok Kumar and ors.

Disposition : Petition allowed

Judgement :

ORDER

Bhanwar Singh, J.

1. This petition for a writ of habeas corpus has been filed on behalf of Vivek Kumar aged 13 years by his mother Smt. Meenakshi Devi with the contention that she being a natural and legal guardian of her son is entitled to his custody.

2. Shortly stated, the petitioner's case is that after her husband's death, the opposite parties, who are the brother, grandmother and the sister respectively of

her husband, forcibly started living at her residence No. 9/217, Indira Nagar, Lucknow which was allotted in her husband's name during her lifetime. They misbehaved with her and threatened to take away her both the children if she would offer any resistance to their dictates. It was in these circumstances that she was forced to leave her husband's house on 28-6-2001 but she was not allowed to take along her son Vivek, although she could manage to carry with her another son Abhishek Kumar. She moved an application to the Additional District Magistrate, Lucknow for providing security to her as she was afraid of the atrocious attitude of the opposite parties. In the meantime, the opposite party No. 1 who is the uncle of the petitioner Vivek moved an application before the District Judge for his appointment as guardian of the petitioner. Such a move was made with evil design to pressurize the petitioner's mother Meenakshi to abandon her claim for employment under Dying in Harness Rules. Further, there was no justification for moving such an application when Meenakshi had already been appointed as guardian of the petitioner by the Court vide order dated 9-11-2000 as contained in Annexure-1, As a matter of fact, there cannot be a better guardian for a child other than his own mother but the opposite party No. 1 filed application for his appointment as legal guardian in order to pressurize her so as to relinquish her rights over the accommodation which was allotted in her husband's name and other movable and immovable properties. On the strength of her legal claim, Meenakshi succeeded in seeking employment and she is regularly earning monthly salary of Rs. 5.000/- as a Central Government employee. The opposite parties turned down all requests of the petitioner's mother to hand over the petitioner's custody but every time, not only they refused but also threatened her with dire consequences. In these compelling circumstances, the petitioner was obliged to file this petition for a writ of habeas corpus commanding the opposite parties to release the petitioner from their illegal custody.

3. The opposite parties 1 and 3 filed their objections and asserted that after the death of Pradeep Kumar on 8-2-1999, they allowed his widow Meenakshi Devi to draw the amount of gratuity, group insurance and other dues. After collecting all her dues, she started living in a different house with one Naseeb Prasad Bhartiya. However, the petitioner Vivek being mature refused to accompany her mother. After a lapse of about one year, she has filed this petition for habeas corpus,

possibly with an intention to grab over the house in which the opposite parties and Vivek Kumar have been living. They have denied that they came to live in the house allotted to Pradeep Kumar after his death. As a matter of fact, they were living with him for quite a long time. They have denied that they threatened the petitioner's mother with dire consequences. Also they have denied the allegation that Meenakshi Devi was forced to leave the house. Master Vivek Kumar is living with the answering opposite parties with his free consent and as he is mature enough to take a decision, he is not at all willing to go and live with his mother. Otherwise also, it is not in the welfare of the child to go to Meenakshi's place as she is an uneducated lady and she has been living in the company of altogether a stranger person Naseeb Prasad Bhartiya. The boy will neither get a healthy or moral atmosphere there nor he will be treated with care and affection by the companion of Meenakshi. The opposite parties are well to do persons and can very conveniently and comfortably provide better nursing to Master Vivek who is willingly residing with them. Therefore, the petition for habeas corpus deserves to be rejected.

4. I have heard learned counsel for both the parties and perused the record.

5. It is noteworthy that the petitioner Vivek Kumar appeared before this Court and on being asked expressed his desire to carry on his habitation with his Bua (Father's Sister) Km. Santosh and the other opposite-parties. The boy's mother Meenakshi Devi, who was present in the Court, submitted that he being a boy of tender age does not understand the implications of the opposite-parties' designs by winning over him. Indeed, the boy is too young to understand the pros and cons of the parties' rival claims. As argued by the learned counsel for the petitioner, the opposite parties seemed to be more interested in the property of the petitioner rather than his welfare. In this context, it was submitted that before the death of petitioner's husband, he was allotted House No. 9/217, Indira Nagar, Lucknow and after his death Meenakshi Devi with her two children including the petitioner continued to reside therein but a little while after the opposite-parties forcibly started living in the same accommodation and maltreated her as a result of which she was forced to quit the said residence. In this way, the opposite-parties have grabbed over the said house of the petitioner and it is with this interest in this

property that they have enticed away Vivek from the natural custody and guardianship of his mother. Meenakshi seeking protection for self and property moved an application (Annexure 2) to the Additional City Magistrate, Lucknow and narrated therein as to how shabbily she had been treated by the opposite-parties. It was also recited in the said application that while leaving the house under the compelling circumstances, she was not allowed to carry with her elder son Vivek. However, she could manage carrying, with her the other son Abhishek, who was younger to Vivek. It has also been mentioned in the said application that the house allotted to her husband had been grabbed over by the opposite-parties. Narrating other details of her maltreatment, she feared a threat to her life at the hands of the opposite-parties. The opposite-parties have not denied that they are in occupation of the aforesaid house. It was asserted by them that Meenakshi Devi is an uneducated woman and she had fallen in bad company of one other person, namely, Naseeb Prasad Bhartiya. It would, therefore, be not a happy situation if Vivek Kumar would be asked to live in an unhealthy atmosphere. Meenakshi Devi denied that she had any connection with the aforesaid person. In view of her denial, the opposite-parties' contention that the petitioner may have to bear the effect of an unhealthy atmosphere does not seem to carry any weight.

6. The second ground leading to dissensions between the two parties was Meenakshi's employment provided to her by Food Corporation of India under Dying in Harness Rules. It was submitted on behalf of the petitioner that his mother Meenakshi was entitled to be employed under Dying in Harness Rules but the opposite-party No. 3 staked her claim for employment. The latter also pressurized Meenakshi to withdraw her claim of employment and surrender her right in her favour. When Meenakshi refused to succumb to her pressure, she was harassed by all the opposite-parties. This situation also compelled the mother of the petitioner to quit her house. However, she succeeded in getting the employment but at the cost of inviting the ire and wrath of the opposite-parties, who on their turn provoked Vivek to become hostile to her by poisoning his ears with all sorts of concocted stories.

7. The opposite-parties were also not happy with Meenakshi because of her having asserted her right to withdraw the GPF, gratuity, group insurance and other

dues of her husband. In fact, there was nothing wrong with Meenakshi staking her claim to receive all the dues of her husband, as she was legally entitled to have all such claims. She has however shown her bona fides by depositing a sum of Rs. 35,000/- with Bharat Overseas Bank 'Limited in the name of the petitioner. A copy of the term deposit receipt indicating details of such deposit has been brought on record.

8. Keeping the legal rights of Meenakshi in view, it can be observed that there was nothing unusual if Meenakshi had withdrawn the GPF, gratuity, group insurance and other dues of her husband for the benefit of his own and her two children. From the circumstances which have been referred to above, it appears to be sustainable that the Meenakshi's claim of her rights to stay in the house and to withdraw the abovementioned amounts were certainly the cause of bitterness with the opposite-parties. But they should have not forgotten that a widow and the children of a deceased were the legal heirs and therefore, Meenakshi and her sons had preferential rights in the movable and immovable properties left by Pradeep Kumar.

9. In comparative terms, the opposite parties are in no way better position to that of Meenakshi's.

10. The opposite-parties 1 and 2 are husband and wife and they have their children. Ashok Kumar is no doubt employed but he has his own family to support. The opposite-party No. 3 is a spinster and in all probability she would get married in due course of time. After her marriage, she will be devoted to her husband having very little time to look after the petitioner. Then, she has no source of income at present and her future cannot be said to be secured from financial point of view, as can be observed at this stage. In these circumstances, none of the three opposite parties is in a position that could be termed to be better than Meenakshi. Further a comparison of the two ladies, namely Meenakshi and Santosh in case of contracting their respective marriage can well lead to visualize that Meenakshi being the mother of Vivek will certainly be in a better position to look after her son. She has already been appointed as legal guardian of her both the minor sons including Vivek by virtue of the order dated 9-11-2000, passed by

the VIIIth Additional District Judge, Lucknow (Annexure-1). The application of Ashok Kumar moved by him for his appointment as legal guardian of the petitioner appears to have been filed with a view to cause hindrance in mother's rights and further tease her. Moving of his application is contemptuous as Ashok Kumar has not yet honoured the Court's order (Annexure-1) whereby Meenakshi was held to be as natural and legal guardian of Master Vivek. A perusal of the application (Annexure-2) appears to indicate that the opposite parties are hell-bent upon to detain Vivek with them so as to, not only deprive his mother from his association and custody but also to stake a claim for partition of moveable and immoveable properties on the ground of their being custodian to the boy. The opposite parties have not been able to convince this Court to show that they are more resourceful, financially or otherwise to provide better care and nursing of the boy. It appears that in order to succeed in their designs, they have poisoned the ears of the minor boy who, being in their clutches and without understanding his future interest, revealed before the Court that he was nicely placed with the opposite parties. They have even challenged Meenakshi's rights for succession to her moveable and immoveable properties including the dues of G.P.F., gratuity, and group insurance etc. Though they did not reside with Pradeep Kumar during the latter's lifetime, still they are very nice people to have come forward to share the debt liabilities of the deceased and pay them off. They, however, failed to disclose any reason as to why Meenakshi being the Widow of Pradeep Kumar and mother of his two sons would not be entitled to the properties left behind by him. It is debatable as to whether Meenakshi left the house in which she resided with her husband of her own accord or she was compelled to do so. From the facts and circumstances which have been placed before this Court, it may be inferred that Meenakshi was forced to leave the house and that too without the company of her son Vivek and since her rights to property and the custody of her son were infringed, she was obliged to have moved a complaint to the Additional District Magistrate, City (Annexure-2). In these circumstances, the opposite parties do not seem to be moving with bona fides to hold the custody of the petitioner.

11. Learned counsel for the opposite parties relied upon a citation, Kirtikumar Maheshankar Joshi v. Pradipkumar Karunashanker Joshi, AIR 1992 SC 1447 and contended with reference to the principle of law laid down therein that since

Master Vivek was not willing to go with her mother, he should not be handed over to her custody. The facts of that case were entirely different from those of the case in hand. In that case, not mother but father claimed custody of the children who were not willing to live with him on account of their being meted out with ill-treatment.

12. Here, in the case in hand, Vivek did not recall any episode of ill-treatment at the hands of his mother who is very affectionate to him. He simply expressed his willingness to carry on his habitation with the opposite parties but that obviously appears to have been conveyed to the Court under their motivated influence. Nothing of the sort of the above case prevails in the present case and, therefore, the aforesaid citation is not at all attracted. For the same reasons, the other citation, 'Goverdhan Lal v. Gajendra Kumar, AIR 2002 Rajasthan 148' is not of any help to the opposite parties. In that case also, the father claimed custody of a minor son whose mother had died. The father had contracted a second marriage and out of the said wedlock, a daughter was born. The minor son of the father was pursuing his studies with his grand parents and he was being looked after and brought up with all care. It was in these circumstances that the welfare of the son was considered to be safe in the hands of the boy's maternal grand parents.

13. In the case in hand, Meenakshi is bringing up her another son Abhishek without any complaint from any quarter. She is employed and capable in all respects to nurse her both the children. Her cries before the Court seemed to be genuine and not the tears of crocodile as termed by the opposite parties. She has submitted to the Court that she would always be subject to any modification of the Court's order, in case she would be found lacking in her motherly obligations.

14. Considering all what has been said above, I am of the view that Meenakshi being a natural guardian of her son Vivek is entitled to his custody.

15. Accordingly, this writ petition is allowed and the opposite parties are commanded to release Master Vivek from their illegal custody with immediate effect. Master Vivek, who is present in Court, is set at liberty to join his mother.