

Partantra Vs. Sanjay Kumar Gupta

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Court : Allahabad

Decided On : Apr-26-2007

Reported in : 2007(4)AWC3533

Judge : Rakesh Sharma, J.

Appellant : Partantra

Respondent : Sanjay Kumar Gupta

Advocate for Def. : Sri. Nitin Kumar Agrawal, Sri. N.K. Agarwal

Advocate for Pet/Ap. : Sri. Divakar Rai Sharma

Disposition : Appeal dismissed

Judgement :

Rakesh Sharma, J.

1. Heard Sri Divakar Rai Sharma, learned Counsel for the appellant and Sri Nitin Kumar Agrawal, learned Counsel for the respondent.

2. The appellant who is the maternal uncle of a minor male child of 4 years named Honey (Hani in the pleadings) has assailed the judgment and order dated 26.7.2004 passed by Additional District Judge, Court No. 4, Aligarh allowing the application of father for handing over the custody of the child to him in preference

to maternal uncle's possession.

3. As per learned Counsel for the appellant, appellant's sister got married to the respondent, Sri Sanjay Kumar Gupta on 21.11.1997 and out of the wedlock a son named Honey was born on 20.8.1998. Unfortunately, appellant's sister had died in December, 1998 leaving behind an infant, i.e., Honey. At the time of death, appellant's sister was living with her parents.

4. Learned Counsel for the appellant has further submitted that husband of Smt. Rupa Varshney, Sanjay Kumar Gupta had re-married in April, 2000 and is having two sons out of this subsequent wedlock.

5. After the death of Smt. Rupa Varshney, an application was made under Section 498A, I.P.C. read with Section 34 of the Dowry Prohibition Act and thereafter a criminal complaint was registered. Since Smt. Rupa had died, the litigation could not proceed further.

6. The minor Honey is living with his maternal uncle and aunt. This couple is issue less and, as such, for the little child his maternal uncle is the most appropriate person to look after the interest and welfare of the minor child.

7. The appellant has challenged the impugned judgment and order passed by Additional District Judge, Aligarh who has allowed custody of the child in favour of the father, taking him as natural guardian of Master Honey.

8. Sri Divakar Rai Sharma, learned Counsel for the appellant has assailed the judgment on the ground that the court below has failed to notice that Smt. Rupa was subjected to cruelty by her in-laws. She was maltreated throughout her married life. The respondent had re-married and is having two issues out of the second wedlock and, as such, the required affection and care may not be provided to the child. The Court has failed to appreciate the submission made by the appellant before the learned Additional District Judge, Aligarh, taking up the case little too far, the findings are vague and are beyond pleading.

9. Sri N.K. Agarwal, learned Counsel for the respondent has resisted the appeal. He submits that respondent is well placed in life. He is having a shoe selling

agency and is an agent of Pepsi Cola cold drinks for the township. He alongwith his present wife are prepared to maintain his own child showering all the affection and care on him. Father is the natural guardian as such, court below has rightly passed an appropriate order under the facts and circumstances of the case.

10. Counsel for the respondent further submitted that in the present case, the Court held that the maternal uncle Sri Partantra filed an application under Section 125, Cr.P.C. and is getting the relief, of payment of Rs. 350 per month for maintenance of the child itself goes to show that the maternal uncle is unable to maintain the child while the real father is fully capable of maintaining his own child. The respondent has been dragged in an unnecessary litigation as an illegal demand was made by Sri Partantra on the death of the respondent's first wife, i.e., Smt. Rupa Varshney. The respondent did not accede to the demand and this has resulted in this litigation.

11. I have heard learned Counsel for the parties at length and perused the material on record.

12. Here is a case where Smt. Rupa and Sri Sanjay Kumar Gupta (sister of appellant) was solemnised on 21.11.1997. Out of the wedlock a son was born on 20th August, 1998. Smt. Rupa had died while she was living in her parents house and the brother Sri Partantra with her minor child. Naturally, the infant, Honey has remained throughout under the influence of his maternal uncle and his family. In the present case, the maternal uncle could not afford to maintain the child as he had to file an application seeking maintenance of little child and the Court had granted Rs. 350 per month as maintenance which was accepted by the maternal uncle. On one hand, he has sought maintenance from the Court for rearing the child on the other hand he has submitted before this Court that he is so well off and was able to take care of this child. It appears that he is incapable of taking care of the child.

13. It is noteworthy that at the time of death of his first wife an application under the Guardians and Wards Act was filed by the respondent. It is a case where real father and natural guardian of a 4 years' old minor, sought custody of his own son who was living with her maternal uncle since even before the death of his mother.

It is settled that father is the natural guardian of the minor child, and in the present case the minor child was 4 years' old. At the time of initiation of litigation the parents were fully prepared to take care of the child and maintaining him. As per material available on record it was clear that Sri Sanjay Kumar Gupta is having sufficient means of Income and can very well afford maintaining the child even though he may be the third child in the family. It is also brought on record that he is living in Dibai Town of district Bulandshahr where the educational facilities are available. The Court has also taken into account the fact that the minor child was under the influence of maternal uncle and his personality and will was being dominated by him. They were exercising total control over the minor child. In such circumstances, the Court has rightly allowed the custody of the child to the father, a natural guardian of the child. I find no illegality or infirmity in the judgment and order passed by the court below. No material has been placed before the Court to substantiate the pleas taken by the maternal uncle that the child shall not be properly treated by the father. The myth of a step mother not treating the child properly is not relevant in the present day society. In the absence of any material, no such general opinion can be formed by the Courts.

14. Since, the litigation has continued for about 5 years including three years in this Court applying the principles of law as laid down by Hon'ble Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu v. Union of India : AIR 2005 SC3353 , this Court thinks It proper to award Rs. 25,000 as costs against the appellant which shall be paid to the respondent within one month from today. Custody of the child shall be handed over to the father within one week from today. It is made clear that the order is being passed in presence of learned Counsel for the parties, i.e., Sri Divakar Rai Sharma and Sri Nitin Kumar Agarwal and the order of this Court shall be complied with in its true spirit and within the stipulated period. An affidavit shall be filed by Sri Partantra before the registry for the purpose of record to the effect that he has handed over the custody of the child to the father Sri Sanjay Kumar Gupta and he has also paid the cost Rs. 25,000 to the respondent within the stipulated period.

15. Accordingly, the appeal is dismissed.

