

Ramdayal Vs. Hari Singh

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Court : Madhya Pradesh

Decided On : Feb-28-2007

Reported in : 2007(3)MPHT444

Judge : Arun Mishra, J.

Appellant : Ramdayal

Respondent : Hari Singh

Disposition : Appeal dismissed

Judgement :

ORDER

Arun Mishra, J.

1. This Misc. Appeal has been filed under Section 47 of the Guardians and Wards Act, 1890. Appellant Ram Dayal maternal grandfather of Ku. Nidhi has claimed her custody. The Court below has allowed the application filed by Hari Singh respondent under Section 7 read with Section 8 of Guardians and Wards Act.

2. It is not in dispute that marriage of Rekha was performed with late Indrapal Singh s/o Hari Singh more than 13 years before. Two daughters namely Ku. Neha aged 12 years and Ku. Nidhi aged 10 years were born out of wedlock. Indrapal had died in an accident dated 22-1-1996. It is not in dispute that Rekha the mother

of Ku. Neha and Ku. Nidhi has performed re-marriage (Natra) with one Makhan Singh of Village Bamuliya and she is residing separately at Village Bamuliya, not with any of the daughter. An elder daughter Ku. Neha is living with grandfather Hari Singh, he filed an application under Section 7 read with Section 8 of Guardians and Wards Act submitting that both the daughters after death of Indrapal Singh lived with him, i.e., grandfather for their proper education. He got a house constructed at Bhopal Naka, Sehore and has shifted for the purpose of education of grand daughters to Sehore. Ku. Neha was obtaining education in Class 5th whereas Ku. Nidhi was also obtaining education. Rekha had taken one of the daughters Ku. Nidhi to Village Alampura where Ram Dayal maternal grandfather resides. Rekha has performed re-marriage and was residing at Village Bamuliya not at Village Alampura with Ku. Nidhi. Custody of Ku. Nidhi has not been handed over by Ramdayal to Hari Singh. On account of consideration of remarriage Ram Dayal has obtained a sum of Rs. 50,000/-. The future of Ku. Nidhi was not safe with Ram Dayal. Considering the welfare of Ku. Nidhi custody was prayed by Hari Singh. It was submitted that for proper development and education it was necessary that Ku. Neha and Ku. Nidhi live together, a house has been constructed at proper Sehore Town by grandfather for proper education. Grandfather was having substantial agricultural land whereas Ram Dayal maternal grandfather and his two sons have been sentenced for life imprisonment in a case of murder of which appeal is pending in the High Court. The maternal grandfather owned only 5 acres of land and was residing in a village whereas the grandfather was having 13.5 acres of land, which was sufficient for proper looking after of Ku. Neha and Ku. Nidhi and used to reside in a town.

3. Application was contested by the maternal grandfather Ram Dayal, it was admitted that Rekha had performed re-marriage and he was looking after Ku. Nidhi. No consideration was received by him in lieu of re-marriage (Natra) of Rekha. He was having 7.828 acres of agricultural land and was in financially sound condition to look after the interest of Ku. Nidhi. She was obtaining education at Village Barkhedi a nearby village as such it was prayed that application filed by Hari Singh be dismissed.

4. The Court below as per impugned order has ordered handing over of the custody to the grandfather. The order has been assailed in this appeal.

5. Shri Chandrahas Dubey, learned Counsel appearing for appellant has submitted that mere performance of re-marriage does not disentitle the mother, custody of child. Desire of mother has to be given due weightage with respect to custody of child as mother want that child should reside with maternal grandfather, Handing over of the custody to the grandfather is bad in law. He has placed reliance on a decision of Apex Court in Kumar V. Jahgirdar v. Chethana Ramatheertha : AIR 2004 SC1525 . He has further submitted that Ku. Nidhi was obtaining education in a nearby School at Village Barkhedi. Appellant was having substantial land and was properly looking after Ku. Nidhi as such impugned order be set aside.

6. Shri Nagendra Singh Solanki, learned Counsel appearing for respondent has submitted that no case for interference in the impugned order is made out as the mother of Ku. Nidhi has admittedly performed re-marriage and she is not residing with Ku. Nidhi at Alampura. There is no school at Village Alampura as such she has to go to nearby Village for obtaining education. It cannot be said that in nearby village she is able to obtain proper education whereas grandfather has constructed a house at Bhopal Naka, Sehore, which is a grown up town and Ku. Neha aged 12 years is residing with grandfather. Welfare of both the sisters requires that they should live together in company of each other. Grandfather is looking after Ku. Neha aged 12 years as such it would be proper that both the sisters are brought up together in a town where proper education and other facilities are available. Coming to means of maintenance, agricultural land held by Hari Singh is more as compared to agricultural land held by Ram Dayal. In the facts and circumstances of the case, no case for interference in the order is made out.

7. It is not in dispute that mother has performed re-marriage and is residing at Village Bamuliya not at Village Alampura where Ku. Nidhi aged 10 years is residing. Ku. Nidhi is not admittedly residing with mother. Mother was called in the Court, she was having an infant child in her lap born out of remarriage. Mother is not at all looking after Ku. Nidhi. It is also clear that there is no school facility

available at Village Alampura where appellant resides, Ku. Nidhi has to go to Village Barkhedhi to attend a school whereas proper education facility is available at Sehore which is a District Headquarter and a house has also been constructed by grandfather at proper Sehore for proper education of both girls Ku. Neha and Ku. Nidhi, thus considering the significant aspect that better education facility is available at Sehore as compared to Village Barkhedhi and non-availability of education facility at Village Alampura tilts the balance in favour of Hari Singh. Proper education facility is one of the main considerations in the matter of welfare of the child, thus welfare of Ku. Nidhi lies in obtaining proper education by residing at Sehore along with Hari Singh and her sister Ku. Neha not at Village Alampura where no education facility is available and she has to go to a different Village Barkhedhi to obtain education.

8. It is true that re-marriage does not disqualify the mother for claiming custody of child as held by the Apex Court in *Kumar V. Jahgirdar v. Chethana Ramatheertha* (supra). At the same time the Apex Court has held that mother cannot always claim superior custody rights. As in the instant case mother herself is not claiming custody of the child, the ratio of aforesaid decision is of no help to the appellant.

9. It is also not in dispute that one of the daughters Ku. Neha aged 12 years an elder sister of Ku. Nidhi is residing with her grandfather Hari Singh and obtaining proper education at Sehore. As both the girls are aged 12 years and 10 years, it is considered proper that they should not part with the company and it would be better for their welfare if they live together. Ku. Nidhi can obtain better education along with Ku. Neha at Sehore so that she may not lag behind. Circumstances are not such to permit both the sisters should reside separately.

10. Thus the Court below has rightly found that welfare of Ku. Nidhi is in residing with grandfather as such custody has been rightly ordered to be handed over to him. Financial aspect has also been taken into consideration and comparative literacy in the family.

11. In the overall facts and circumstances of the case, the order passed is found to be proper. No case for interference is made out. Thus I find appeal to be devoid of merit, same is dismissed. No order as to costs.

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