

Mamta Vs. Yogendra

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Court : Madhya Pradesh

Decided On : Jan-19-1996

Reported in : I(1996)DMC652

Judge : A.R. Tiwari, J.

Acts : Guardian and Wards Act, 1890 - Sections 25 and 47; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 17

Appeal No. : Misc. Appeal No. 190 of 1990

Appellant : Mamta

Respondent : Yogendra

Disposition : Appeal dismissed

Judgement :

A.R. Tiwari, J.

1. The unsuccessful non-applicant has filed this Miscellaneous Appeal under Section 47 of the Guardian and Wards Act against the order dated 19.1.1990 passed by VIII Additional Judge to the Court of District Judge, Indore in Guardian Case No. 28/89 thereby declaring the respondent as guardian of minor son Hemant and directing the appellant to hand-over this minor to the respondent,

2. Facts lie in a narrow compass.

The appellant was married to respondent on 18.4.1987. Hemant was born to them. The wedlock turned out to be deadlock. The dispute arose as to who should keep the minor child. The respondent filed the application under Section 25 of the Guardian and Wards Act before the Trial Court. The Trial Court heard both sides and passed the aforesaid order. Aggrieved, the wife has filed this miscellaneous appeal.

3. None appeared for the appellant to press this appeal. Mr. R.N. Gupta, learned Counsel appeared for the Respondent. He submitted that Hemant is now about eight years' old and the Respondent-father has the legal right to keep the son and act as his guardian.' According to him, the order passed by the Court below is on firm foundation and is not liable to be dislodged or demolished. Appellant remained absent in the Trial Court and was proceeded ex-parte. Ex- parte evidence shows that the appellant was a woman of loose character. It is submitted that welfare of the minor was kept in mind.

4. However, as none appeared to press this appeal. I apply Explanation inserted by Amendment Act, 1976 to Order XLI, Rule 17 of the Code of Civil Procedure and dismiss this appeal in default of appearance and for want of prosecution without examining the merits of the matter.

5. There shall, however, be no order as to costs.

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