

Sonu Vs. Ruhi Joshi

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Court : Punjab and Haryana

Decided On : May-26-2008

Reported in : (2008)152PLR398

Judge : Surya Kant, J.

Appellant : Sonu

Respondent : Ruhi Joshi

Disposition : Petition dismissed

Judgement :

ORDER

Surya Kant, J.

1. This Revision Petition under Article 227 of the Constitution is directed by the petitioner-husband against the order dated 20.11.2006 passed by the learned Guardian Judge, Ludhiana allowing the application of the respondent-wife for interim custody of their minor son, namely, Love; as well as against the order dated 23.7.2007 passed by the court of the learned Additional District Judge (Ad-hoc), Fast Track, Ludhiana, upholding the aforementioned order of the learned Guardian Judge.

2. The parties were married on 22.3.2003 and a son, namely, Love was born out of the wedlock on 22.9.2004. The material tie however ran into rough weather and it appears that the parties executed a 'compromise deed' dated 10.1.2005 in terms whereof they parted ways from each other. The custody of the minor child, however, was retained by the petitioner father without any serious objection by the respondent-wife. She later on moved a petition under Section 25 of the Guardian & Wards Act for the custody of the minor son and also moved an application for granting his interim custody. The main plea put-forth by the respondent-wife was that notwithstanding the fact that no valid divorce has taken place between the parties, the petitioner-husband has remarried and has a child out of the second wedlock. In these circumstances, she pleaded that the retention of her minor son in the custody of the petitioner was not in the child's interest or welfare.

3. The application for interim custody having been allowed by the Guardian Judge, whose order has been further upheld by the learned Additional District Judge, that the petitioner-husband has filed this Revision Petition.

4. I have heard Learned Counsel for the parties and perused the impugned orders as well as the documents placed on record by the respondent-wife.

5. From the averments made in the affidavits, dated 23.S.2008 filed by Smt. Preety Sharma (mother of the respondent) as well as Smt. Rachna @ Sweety (who is stated to be sister of the mother of the respondent), coupled with the certified copies of the birth certificates appended thereto, prima-facie, it appears that the petitioner has performed second marriage with Santosh @ Indu d/o Surjit Singh and a female child has also born out of the said wedlock.

The child in question, namely, Love is not even four years old. Having regard to his age and the nature of care which he requires at least for another two-three years, I am satisfied that it would be more beneficial and in the interest of the minor child that his custody is retained by the respondent-mother instead of the petitioner-father. The much reliance placed upon by the petitioner on the so called 'agreement of divorce' is of no consequence as the document carries no legal sanctity.

6. Consequently, and for the reasons aforesaid, I do not find any merit in this revision petition which is accordingly dismissed. The petitioner is directed to hand over the custody of the minor child to the respondent-wife within one week from the date of receipt of a certified copy of this order.

No costs.

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