

Soni Singh Vs. Bimlesh Kumar Singh

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Court : Jharkhand

Decided On : Aug-31-2015

Appellant : Soni Singh

Respondent : Bimlesh Kumar Singh

Judgement :

1. IN THE HIGH COURT OF JHARKHAND AT RANCHI ----- F.A. No.46 of 2014
With I.A. No.7805 of 2013 ----- Soni Singh, wife of Shri Bimlesh Kumar Singh,
Daughter of Shri Mrityunjay Singh, Resident of Jharnapara, Park Market, Hirapur,
Dhanbad PO,PS and District DhanbadAppellant -Versus- Bimlesh
Kumar Singh, son of Shri Yugal Kishore Singh, Resident of Chiragora, Samsan
Road, PO, PS and District DhanbadRespondent ----- CORAM: HONBLE
MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE P.P.
BHATT ----- For the Appellant : Mr. Shailesh, Advocate For the Respondent : Mr.
Deepak Kumar, Advocate ----- st 19/ Dated:

31. August, 2015 Per Virender Singh, C.J.:

1. The matter is listed under the heading for admission. On consent of both the parties the case is admitted and taken up for hearing and final disposal along with I. A. Petition No - 7805 of 2013 which is filed by the opposite party /Appellant for stay of the Execution Case No. - 3 of 2011.

2. Heard the Learned Counsel Mr. Shailesh appearing on behalf of the Appellant (Wife) and the Learned Mr. Deepak Kumar Counsel appearing on behalf of Respondent (Husband).

3. Challenge in this appeal is the part of the

JUDGMENT / ORDER

dated 21.04.2011 passed by the learned Principal Judge, Family Court, Dhanbad in Civil Misc. Case No.5 of 2008 whereby and where under while rejecting the petition filed by the respondent (Husband) for custody of minor child, the learned Court below allowed visitation right to the respondent (Husband) on every 2nd Sunday of each month between 10:00 a.m. to 12:00 a.m.

4. The learned counsel for the appellant submitted that the marriage of the appellant (Wife) was solemnized with the respondent (Husband) on 28.05.2004 according to Hindu rites and rituals, at Dhanbad and out of the said wedlock they were blessed with a son namely Bedant on 29.03.2006. It is further stated that the appellant-wife was subjected to cruelty and torture and ultimately she left her matrimonial home and started living in her paternal home. It is further stated that when the respondent tried to snatch away her minor son she filed an F.I.R being Dhanbad P.S Case No. 298 of 2008 and as a counterblast the respondent filed a Civil Misc. Case No. 5 of 2. 2008 u/s 25 r/w section 10 and 12 of the Guardians and Wards Act, 1890 for custody of the child.

5. Learned counsel for the appellant (wife) assailed the impugned judgment on the ground that the learned court below has wrongly recorded the finding that the appellant had given any concession with regard to the visitation right of the respondent. It is further submitted that the learned court below failed to appreciate the fact that the child was personally examined by the court wherein he specifically stated that he wanted to remain with his mother and he had no interest in his father. It is further submitted that the order about visitation right cannot be made casually but it should be made keeping in view of all attending facts and circumstances and after examining the appellant as well as child. It is further submitted that no issue regarding visitation was formulated and as such any

finding on visitation right is perverse and illegal. It is further submitted that the learned court below failed to appreciate that earlier also the order of production of child was challenged before this Honble Court in W.P.C No. 255 of 2010 and the learned Single Judge stayed the order of production on with an observation that such short meeting with the estranged father would subject the child, who is only about four years old, to unnecessary emotional trauma. Learned Counsel for the appellant further submitted that the son of the appellant namely, Bedant, has always been properly cared and looked after by her at her parents house.

6. Per contra, learned counsel for the respondent denied all the allegations levelled against the respondent and submitted that the respondent (father) is a natural guardian of his minor son and should not be deprived by the love and affection of his child. It is further submitted that when the appellant restrained him from meeting with his child he filed the suit for custody of his child and the learned lower court after recording the concession of the appellant given him visitation right and as such no interference is warranted in the matter.

7. Heard the learned counsels for both the parties and perused the materials placed on record. The only point falls for consideration before this court is as to whether the impugned order, by which the visitation right is given to the respondent, suffers any infirmity and as such we need not go into the very detail of the case. From perusal of para 26 of the impugned judgment it appears that the lower court below has recorded the concession of the appellant with regard to the visitation right of the respondent subject to the condition that at the time of visiting one of the male member from the 3. side of the appellant should remain present at the time of meeting. Para 26 of the impugned order is quoted hereinbelow :-

26. In reply to the submission made on behalf of the plaintiff, it is submitted on behalf of the defendant that the defendant has got no objection in giving visitation right to the father (plaintiff), but at the time of visiting one of the male member from the side of the defendant should remain present preferably the male member from the defendant side shall be the brother of the defendant or the uncle of the defendant.

8. However, the appellant at the time of hearing the appeal has reverted back from the earlier statement by stating that the learned court below has wrongly recorded the concession. The argument of the learned counsel for the appellant cannot be accepted for the reason that if the appellant had any objection with regard to the wrong recording of concession in the judgment than she should have to file a review petition before the court below itself but the appellant in place of filing review petition chosen to file appeal. We are not going into the dispute as to whether concession about the visitation right was given before the learned Court below or not. Looking to the case from the other angle also, a father cannot be completely denied of the love and affection of his child who has also a right to help in the child's upbringings. The other argument that no issue with regard to visitation was formulated, also cannot be accepted as the learned court below while deciding the issue no. VIII as to what other relief the plaintiff entitled to, the learned court below after recording concession allowed the visitation right to the plaintiff/respondent.

9. The appellant has given much stress on the point that while examination of the child he had not shown any interest in meeting with the respondent and the lower court below has failed to look into the interest of the child. The appellant cited a judgment of the Honble Supreme Court *Gayati Bajaj Vs. Jiten Bhalla* reported in (2012) 12 SCC 471 wherein the Honble Supreme Court by means of personal interaction with the mother and children tried to decide the issue of custody and visitation right to a satisfactory conclusion but the children, one of whom was at the verge of majority, very specifically denied to meet with the mother. Finally the Honble 4. Supreme Court came to the conclusion that the visitation right to the mother would be adverse to the interest of the children.

10. However, in the case in hand at the time of examination in Court the child namely Bedant was about 4 to 5 years of age and there was possibility of tutoring of such child of tender age and the possibility is become more high when he at the time of examination had come from the custody of his mother. Thus the case cited by the appellant is different from the facts and situation of the given case and as such the same is not applicable in this case.

11. We have also perused the order passed in W.P.C No. 255 of 2010 and we are of the opinion that the order dated 29.01.2010 was passed under the different situations wherein the learned court below was directed to produce the child at every date however now the situation has been changed and the child will meet with his father once in a month in familiar environment which will help him in understanding the relationship and also the same will help him in becoming a social man.

12. From the above discussion, we do not find any illegality and infirmity in the judgment passed by the learned lower court below. Appeal as well as I.A No. 7805 of 2013 filed for stay of the Execution Case is dismissed. There shall be no order as to cost. (Virender Singh, C.J.) (P.P. Bhatt, J.) Anu/SI .

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