

Chatter Singh Vs. Usha Rani

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Court : Supreme Court of India

Decided On : Jul-27-2000

Reported in : I(2001)DMC392; JT2000(9)SC482

Judge : S.B. Majmudar,; M.B. Shah and; U.C. Banerjee, JJ.

Appeal No. : Civil Appeal No. 4267 of 2000 (Arising out of S.L.P. (C) No. 6444 of 1999)

Appellant : Chatter Singh

Respondent : Usha Rani

Judgement :
ORDER

S.B. Majmudar, J.

1. Leave granted.
2. By consent of learned Counsel for the parties, the appeal is being disposed of forthwith.
3. The question involved is about the interest of minor daughter 'Swati'. The grandfather of the child is the appellant and the respondent is the mother. The District Court has ordered the custody of the child to be handed over to the mother. The child 'Swati' is almost 10 years' old. The order of the learned District

Judge is confirmed by the High Court and that is how this appeal has been filed by the grandfather.

4. The respondent was married to one Anil Kumar, son of the appellant on 15th February, 1989 and the child was born on 19th October, 1990. Unfortunately, the respondent's husband Anil Kumar expired on 26th December, 1994. There appears to be some earlier discord between the respondent and her father-in-law and that is why she is now staying in another town and she is serving with the State Transport Department.

5. We have gone through the judgment rendered by the learned Additional District Judge and as confirmed by the High Court. In our view, it is in the interest of the minor child 'Swati' to be kept in the custody of the mother, respondent herein, the mother being the natural guardian and especially when the child is a female. However, the sentiments of the grandfather, appellant before us, have also to be kept in view. During the pendency of these proceedings, we tried to find out an amicable solution to the dispute between the parties and by interim order we directed the child to be handed over to the respondent in compliance with the order under appeal and also granted access to the appellant to meet 'Swati' from time to time. She is accordingly now with the mother. We are informed that the appellant as well as the respondent have deposited Rs. 1,00,000/- (Rupees One Lac only) each with the District Court in terms of the order of the learned Additional District Judge dated 21st July, 1998. The amount is lying deposited in fixed deposit. The amount is being re-invested from time to time by interim orders of the Court. The interest accrued is not permitted to be released to the either side. In our view, in the interest of justice while confirming the order under appeal, certain further directions are necessary, after hearing the parties, and on which, we are happy to note, there is consensus between the parties. We direct as under:

(1) Even while the minor girl 'Swati', who is now studying in primary school, remains in the custody of her mother at Muzaffarnagar, during long summer vacation of about four weeks or more, the minor child 'Swati' shall be taken by the respondent-mother to the place of residence of the appellant at respondent's convenience after giving due notice to the appellant. Thereafter, for a period of 15

days, the child shall remain at the place of the grandfather, the appellant herein and on the expiry of 15 days, that is, on the 16th day, it will be the responsibility of the appellant to send back the child to the respondent-mother.

We make it clear that this period of 15 days, during which the minor child 'Swati' will be permitted to remain with the appellant, will be clear 15 days. Learned Counsel for the appellant has undertaken to see to it that on the expiry of 15 days, the child is sent back to the respondent.

(2) In case of any short vacations in the school, i.e. , of one week or two weeks, at least for a period of continuous three days on each occasion, the minor child 'Swati' shall be taken by the respondent to the place of residence of the appellant and similar arrangement, as aforesaid, will be made for three days and on the 4th day, it will be the responsibility of the appellant to return the child to respondent-mother.

(3) The amount of Rs. 2,00,000/- (Rupees Two Lacs only) invested under the orders of the District Court, as aforesaid, shall be continued to be invested and re-invested from time to time in fixed deposit alongwith the accrued interest thereon and the said amount shall not be permitted to be released to either side.

It is made clear that the aforesaid invested amount which is to be re-invested from time to time with accrued interest will remain so invested until the child becomes major, i.e., 18 years of age.

(4) This will be subject to the rider that in case of any emergency or absolute necessity for the benefit of the child, if any amount of accrued interest or any part of the invested principal amount is required to be released, it will be open to the respondent-mother to file appropriate application before the District Court, Muzaffarnagar. The learned District Judge, before whom such application is moved, will pass appropriate orders, after hearing the parties.

Such an application may be moved in case both the parties are not able to arrive at a consensus about the withdrawal of the aforesaid amount of interest or any part of the invested principal amount.

(5) It is also directed that apart from the aforesaid permitted stay of the child with the appellant as per direction Nos. (1) and (2) above, if in future at any time, the appellant desires to see the minor child 'Swati' at the residence of the respondent, he will be permitted, after due intimation to the respondent, about suitable time and as found convenient to the appellant as well as to the respondent, to go and visit the child and be in her company at least for 2-3 hours. It is clarified, however, such liberty given to the appellant will not be available unless a period of at least two months from the earlier visit expires.

(6) We are told that the appellant has transferred some portion of land from Khata No.48 in Khasra No.205 in favour of the minor daughter 'Swati' @ 'Chutki', but the Sale Deed is still with the appellant. Under these circumstances, we direct that the transferred land shall not be alienated by either side till the minor child attains the age of 21 years.

(7) On every 'rakhi' day beginning from 14th August, 2000, the respondent will see to it that the minor child 'Swati' is taken to the residence of the appellant. That shall be done a day prior to the 'rakhi' day at the time convenient to the respondent and subsequent to the 'rakhi' day, it will be the responsibility of the appellant to see that the minor child is returned the very next day to the custody of the respondent.

(8) In case of any changed circumstances, having impact on the question of custody of minor 'Swati' or if at any time any procedural difficulty is felt by either party during implementation of the directions contained in this order, liberty reserved to either party to file appropriate application before the District Court, Muzaffarnagar. If and when such an application is moved, the learned District Judge will decide the same and pass appropriate orders, after hearing the parties.

6. Subject to the aforesaid directions, the order under appeal is confirmed. The Civil Appeal is disposed of accordingly. No costs.

7. We hope and trust that wiser sense will prevail for both the parties so that some better arrangement regarding the custody of the child 'Swati' can be made by their agreement.

