

Ram Singh Vs. Lila Devi

Ram Singh Vs. Lila Devi

SooperKanoon Citation : sooperkanoon.com/684558

Court : Delhi

Decided On : Mar-24-1969

Reported in : 5(1969)DLT619

Judge : P.N. Khanna, J.

Acts : Guardian and Wards Act, 1890 - Sections 25; [Hindu Minority and Guardianship Act, 1956](#) - Sections 6

Appeal No. : First Appeal No. 144 of 1957

Appellant : Ram Singh

Respondent : Lila Devi

Advocate for Pet/Ap. : P.N. Nag and; Chabildas, Advs

Judgement :

P.N. Khanna, J.

(1) Smt. Lila Devi, the respondent (mother of the minor child) filed an application under Section 25 of the Guardian and Wards Act, 1890 (hereinafter referred to as the Act), in the Court of the Senior Subordinate Judge, Mandi, (exercising the power of District Judge, under the Act) praying for the restoration to her of the custody of the minor child, who was and is in the custody of the father, the appellant. The allegations in her application are that she is a divorced wife of the

appellant. Pinki a daughter of the parties born during the wed-lock was more than three years old on the date of the filing of the said application. She is more than five years old now at the time of the hearing of this appeal According to the applicant the child was removed by the appellant, father, from her custody. She further alleged that the child was likely to die on account of the cruel attitude of the father. She, therefore, prayed that the custody of the child be restored to her.

(2) The appellant opposed the application on various grounds. The following two preliminary issues were raised :

- (1) Whether the application is nto in the rescribed form if so to what effect O.P.R.
- (2) Whether the applicant has to gto herself appointed as guardian before applying under Section 25 of the Guardian and Wards Act? O.P.R.'

The learned Senior Subordinate Judge has decided the preliminary issues by his judgment under appeal in favor of the respondent holding that issue No. 1 was nto pressed and that regarding issue No. 2 at it was nto correct to say that no one can be considered to be a guardian of a minor unless he has filed an application asunder Section 7 of the Act'. Aggrieved by this order the fattier has come up in appeal.

(3) Although, the respondent mother, has been served in this appeal and is represented by a counsel, her counsel states that he has received no instructions from her.

(4) The learned counsel for the appellant has drawn my attention to the language of section 25(1) and Section 7(1) of the Guardians and Wards Act and has urged that the application of the respondent mother, is nto maintainable. Section 25(1) of the Act reads as under :-

'ITa ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.'

Section 7(1) of the said Act reads as follows :-

'WHERE the Court is satisfied that it is for the welfare of a minor that an order should be made- (a) appointing a guardian of his person or property, or both or (b) declaring a person to be such a guardian ; the Court may make an order accordingly.'

In order to attract the applicability of Section 25 of the Act, it is, therefore, necessary that the ward should leave or be removed from the custody of the guardian of his person. It is only in the case of the ward leaving or having been so removed from the custody of the guardian that the Court may exercise jurisdiction under Section 25 of the Act to make an order for the return to the ward to the custody of the guardian if it is of the opinion that it will be for the ward's welfare.

(5) According to Section 6 of the Hindu Minority and Guardianship Act the natural guardian of a Hindu minor in the case of a boy or an unmarried girl is the father and after him the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. In this case, therefore, the appellant is the natural guardian of the minor and is also entitled under Section 6 of the Hindu Minority and Guardianship Act to retain the custody of the minor as she at present is of more than five years of age. It cannot be said that the minor daughter, Pinki, was removed, from the custody of a guardian, when she was removed from the custody of the respondent mother, she is not the guardian under the law in the presence of the appellant, father. Section 25 of the Guardian and Wards Act has, therefore, no application to this case. The mother, if necessary, can make an application under Section 7 for being appointed a guardian of the person of the minor and may also then claim for the return of the minor to her custody, which can be granted to her if it is for the welfare of the minor, in the opinion of the Court. As no prayer for the appointment of the guardian of the minor has been made by the mother nor has the minor been removed from the custody of the guardian of her person, the present application of the respondent mother, under Section 25 of the Act, for the return of the minor to her custody is not competent.

(6) The appeal under the circumstance is accepted and the order of the learned Senior Subordinate Judge Mandi is set aside. Under the circumstances of the case there shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com