

Ranjit Singh Thapar Vs. Simran Thapar

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Court : Delhi

Decided On : May-10-1994

Reported in : 1994IIAD(Delhi)857; II(1994)DMC158; 1994(30)DRJ406

Judge : C.M. Nayar, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 26

Appeal No. : Civil Revision Appeal No. 331 of 1994

Appellant : Ranjit Singh Thapar

Respondent : Simran Thapar

Judgement :

C.M. Nayar, J.

(1) The present revision petition has been filed against the order dated November 2, 1993, passed by Shri J.D.Kapoor, Additional District Judge, Delhi, in an application moved by the respondent under Section 26 of the Hindu Marriage Act. The respondent had claimed the custody of the minor female child 'Mehr'.

(2) The brief facts, as cited in the impugned judgment, are that the petitioner was married to the respondent in the year 1979. They could not be get any child and adopted one female child from Orphanage of Missionaries of Charity in the year 1987, when the medical investigations indicated the impossibility of the birth of the

child. The child had the love and care of both the parents till October, 1991, when they started living separately. The petitioner continued to look after the child in the absence of the respondent and the child has been studying in Modern School, Delhi. It has been contended by the petitioner that the respondent has been neglecting the child inasmuch as she left for Dagshai in Simla Hills despite the illness of the child and the petitioner has been responsible to bring her up and put her in a good school in Delhi. The respondent never cared to show any love and affection to the child. This, in fact, is a short resume of the averments made by the petitioner.

(3) The respondent moved an application under Section 26 of the Hindu Marriage Act to claim the interim custody of the child and has contended that the welfare of the child will lie in her being with the respondent and there is no female member left in the house of the petitioner apart from his married sisters, who can be expected to look after the child. The respondent is working as a Vice-Principal in a school in Dagshai Simla Hills where about 150 Boarders and 100 Non-Boarders are studying. The school is a public school of high order and it will be in the interest of the child to be with the mother.

(4) The learned Additional District Judge considered the averments of both the parties and held that the custody of the child should vest with the respondent mother, subject to the petitioner having the right of temporary custody for 2 days i.e. on last Saturday and Sunday of every month and such arrangement is to continue during the pendency of the petition where after both the parties shall be at liberty to claim permanent custody in accordance with the provisions of law.

(5) The learned counsel for the petitioner has contended before me that the Additional District Judge has erred in awarding custody of the minor child to the respondent despite the background of neglect and lack of care, which has been displayed by her. She did not care about the child for quite some time and has now claimed the custody to dislocate the child, who is studying in a good public school in Delhi and take her away out of the jurisdiction of the Court. The petitioner has at all times taken good care and is entitled to the custody and the arrangement, which is continuing till date, should not be disturbed because it will

cause unnecessary emotional tension in the mind of the minor child.

(6) The learned counsel for the respondent on the other hand, has contended that the welfare of the child lies with the mother who is the Vice- Principal of a Public School where large number of children are studying. The respondent mother will be in a better position to take care of the female child and it will be in the interest of justice and welfare of the child that the order of the Additional District Judge is upheld.

(7) I have considered the respective contentions of the parties. I also have had the opportunity to discuss the matter with the petitioner as well as with the respondent. The child was also present in Court. She did not seem averse to either of the parents and was happily enjoying the company of the petitioner as well as of the respondent. It is not necessary to ascertain the wish of the child of a tender age as she is not old enough to form an intelligible preference, which may be considered in deciding her welfare. It is well settled that the dominant consideration in making orders for custody is the welfare of the minor child. There is no doubt that the father in the present case cannot be termed to be unfit, as he seems to be a loving person who is equally concerned about the child. However, his fitness has to be considered, determined and weighed predominantly in terms of the welfare of the child in the context of all the relevant considerations. The trial court has considered that the petitioner is a Chief Executive and is a busy person. The mother of the petitioner, who had earlier looked after the child, has since expired and he has only married sisters. In this situation and considering the fact that the respondent is a Vice Principal of a good Public School in Dagshai where large number of students are studying, the child will be placed better in the company of the mother. The respondent seems to be equally affectionate towards the child and merely because the petitioner is also fond of her would not lead one to the conclusion that the welfare of the child would lie with the petitioner. In any case, the interim custody has been given to the respondent with liberty to the parties to claim permanent custody in accordance with the provisions of law.

(8) The order dated November 2, 1993 of the learned Additional District Judge does not contain any error of law nor the Judge has acted with material

irregularity, which calls for an interference in exercise of revisional powers of this Court. There is no merit in this petition and the same is dismissed accordingly. No order as to costs.

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