

Bimla Vs. Daya Ram and ors.

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Court : Delhi

Decided On : Dec-06-2004

Reported in : 116(2005)DLT208; 2005(79)DRJ170

Judge : R.S. Sodhi, J.

Acts : Guardian and Wards Act - Sections 10 and 25

Appeal No. : FAO 716/2002

Appellant : Bimla

Respondent : Daya Ram and ors.

Advocate for Def. : V.S.Yadav, Adv.

Advocate for Pet/Ap. : Party-in-perso

Judgement :

R.S. Sodhi, J.

1. FAO 716/2002 is directed against the order dated 17th September, 2004 of the Guardian Judge, Delhi, in G-14/2000 whereby the learned Guardian Judge has dismissed the petition of the appellant under Section 10 and 25 of the Guardian and Wards Act.

2. Brief facts of the case as noted by the Guardian Judge are as follows:-

"...the petitioner was married to respondent no.1 according to Hindu Customs and Rights on 2.5.86 and one son Amit was born from the said wedlock on 12.10.88 at Military Hospital, Secunderabad, Andhra Pradesh. It is claimed that in the year 1991 the behavior of the respondent no.1 towards the petitioner became cruel and the respondent no.1 willfully withdraw from the Society of the petitioner and the minor son, and thereafter, filed a petition for divorce before the Hon'ble Distt. Judge, Gurgaon, Haryana bearing HMA No.15/92 which was allowed by order dated 14.1.97 and the decree of divorce was passed. The petitioner preferred an appeal against the said judgment which was admitted on 9.7.99 and respondent no.1 was directed to pay a sum of Rs.625/- per month as maintenance till the disposal of the appeal. It is asserted that on 4.10.92 the respondent no.1 illegally took away the minor child from the custody of the petitioner on the abatement of one Rajender on the pretext of getting treatment done but the petitioner failed to return back the custody of the minor for which contempt application is pending before Ld. Addl.Distt.Judge Gurgaon, Haryana in this regard. It is asserted that in the month of September, 1999 the petitioner has come to know that the respondent no.1 has entered into second marriage with respondent no.2 on 19.10.1997 and one daughter Anjali @ Sweeti is also born from the said wedlock. It is claimed that respondent no.1 has remarried despite the pendency of the appeal. It is alleged by the petitioner that after the second marriage the attitude of the respondent has changed totally towards the child who is facing mental cruelty and his needs are also being totally neglected by the respondent for obvious reasons. Hence the present petitioner be declared as the Guardian of the minor and also for his permanent custody.

The respondent no.1 in his Written Statement took the preliminary objections that this court has no territorial jurisdiction to entertain the present petition; that the petitioner has no source of income and is unable to maintain the child; that the petition is bad for misguide of respondent no.2 who is an unnecessary and improper party to the petition; that the petition is not maintainable in its present form; that the petition does not disclose any cause of action; that the petition is not supported by any affidavit and that the petitioner is guilty of suppressing material facts. On merits, it is alleged that it is the petitioner who stayed at her parental house most of the time on one pretext or the other. Whenever she used to

accompany the respondent nno.1 at the place of his posting, the petitioner used to come to her parental house after staying for few days without the consent of the respondent no.1. She insisted staying in a private accommodation in the heart of the city and was not willing to live in the Government Accommodation. It is alleged that the petitioner is a hot tempered and quarrelsome lady who harassed and humiliated respondent no.1 in one way or the other. She never gave regards to the mother of the respondent no.1 and picked up quarrels with respondent no.1 and his mother. It is claimed that on 17.2.91 the petitioner left the matrimonial home at Ghaziabad after taking all her jewelry and ornaments with her. The respondent no.1 made hectic efforts to bring back the petitioner but she declined to join the company of respondent no.1. It is denied that respondent no.1 subjected the petitioner to cruelty. The respondent no.1 has further explained that the child was suffering from Anaemia and he took the custody of the child through court for his treatment. On 4.6.1992 the respondent no.1 had moved an application for the treatment of the child as he was not keeping well and as per the orders of the Court he got the child treated at Army Hospital, Delhi Cant. Thereafter, the petitioner was directed to bring the child for meeting with respondent no.1 and the petitioner brought the child on one or two occasions but thereafter did not bring the child and thus, committed contempt of the orders of the court. In September 1992 attain when the respondent no.1 came on leave he came to know that the child is sick and he again got the child checked up at Jeevan hospital, Delhi. The child was advised to be brought for regular checkup. The child was to be taken for regular check up on 4.10.92 but the petitioner failed to bring the child to the hospital and it was only under police protection that respondent no.1 took the child and petitioner for checkup. Thereafter, the petitioner herself handed over the custody of the minor to the respondent no.1 for his treatment at various hospitals. The respondent no.1 has denied that he has remarried or has a daughter from his second wedlock and has also denied that he has neglected the minor in any manner. It is submitted that the petitioners not entitled to any relief.

The respondent no.2 was deemed to be served vide order dated 4.4.2000 and was proceeded exparte on 28.8.2000.

The petitioners in the replication reiterated her case as contained in petition and denied the allegations made in the written statement.

The issues were framed on 31.1.2001 as under:-

1. Whether this Court has no territorial jurisdiction as the child is not ordinarily a resident of Delhi?

2. Whether it is in the interest and welfare of the minor child Master Amit if petitioner-mother is appointed and declared as the guardian of the person of the minor? OPP

3. Whether it is in the interest and welfare of the minor child Master Amit if his permanent custody is handed over to the petitioner-mother? OPP

4. Relief."

3. It is contended by Smt. Bimla, the appellant that she should be given visiting rights as the child of the family is about 16 + years of age and is studying in the XIth Class at Jodhpur, Rajasthan.

4. I have talked to the parties in court. Child of the family is present in court. He submits that he does not wish to meet his mother. He also submits that he is studying in XIth Class and gets emotionally disturbed when he is asked to meet his mother. In spite of orders of this court that he meets his mother for about 1/2 an hour, in this court today, he has come out with the same plea that he does not wish to meet her any more. With this attitude, I find that custody of the child cannot be handed over to the mother. Further, the child is being looked after by the father who is educating him well and the child appears, otherwise, to be in good health.

5. In that view of the matter, looking at the welfare of the child, I decline interfering in the judgment under challenge. However, it would be open to the appellant-mother to visit the child of the family and meet him at Plot No.5, Bhairon Vilas, Air Force Area, Jodhpur.

6. It is made clear that the appellant may meet the child of the family provided the child of the family so desires.

7. With this FAO 716/2002 is dismissed

8. CMs.3014/2004 and 3015/2004:

These applications are disposed of in view of the above order in FAO 716/2002.

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