

Gulshan Vs. Sushil Kumar

Gulshan Vs. Sushil Kumar

SooperKanoon Citation : sooperkanoon.com/757467

Court : Rajasthan

Decided On : Nov-11-1992

Reported in : I(1993)DMC151; 1993(1)WLC651; 1992(2)WLN180

Judge : B.R. Arora, J.

Acts : Guardian and Wards Act, 1890 - Sections 25

Appeal No. : S.B. Civil Misc. A. No. 195 of 1991

Appellant : Gulshan

Respondent : Sushil Kumar

Advocate for Def. : N.N. Mathur, Adv.

Advocate for Pet/Ap. : R K. Singhal, Adv.

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the Judgment dated March 6, 1991, passed by the District Judge, Sri Ganganagar, by which the learned District Judge dismissed the application under Section 25 of the Guardian and Wards Act filed by the appellant Smt. Gulshan.

2. Smt. Gulshan was married to Sushil Kumar on April 24, 1980. Out of this wedlock, a son, namely, Rahul was born on June 14, 1981, at Gaziabad. Some dispute arose between Gulshan and Sushil Kumar and a petition for dissolution of the marriage was filed in the Court of the District Judge, Sri Ganganagar. In the proceedings for the dissolution of the marriage, the parties arrived at a compromise and the learned District Judge, on the basis of the compromise, arrived at between the parties, passed a decree of divorce on July 28, 1988. In the compromise, it was agreed that the custody of the son Rahul will remain with the father Sushil Kumar and the mother Smt. Gulshan will be free to meet her son Rahul after making a demand for the same by a prior notice of fifteen days.

3. The appellant thereafter filed an application under Section 25 of the Guardian and Wards Act (for short, 'the Act') for the custody of her minor son Rahul on the ground that her husband Sushil Kumar has contracted second marriage and, therefore, it will be in the interest and welfare of the minor Rahul that the child may be given in the custody of the mother Gulshan. It is, also, mentioned in the application that she gave a notice to Sushil Kumar to arrange for a meeting with her son Rahul, but Sushil Kumar did not arrange for any such meeting and did not permit her to meet with her son Rahul.

4. The application under Section 25 of the Act, moved by the appellant for the custody of her minor son Rahul, was dismissed by the learned District Judge on the ground that the judgment passed by the competent Court for the custody of the minor Rahul under Section 25 of the Act was final and no appeal against that order was filed and, therefore, he is not competent to review its order and to re-hear the same.

5. It is against this order dated March 6, 1991, passed by the learned District Judge, Sri Ganganagar, that the present miscellaneous appeal has been filed by the appellant Smt. Gulshan.

6. The orders passed under Section 25 of the Act for the custody of a child, are always of a temporary nature and they are passed in the facts and circumstances prevalent at the time of order. According to the appellant-applicant Smt. Gulshan, Sushil Kumar has contracted second marriage. This fact has not been denied by

the respondent Sushil Kumar. In the changed conditions and circumstances, including the passage of time, the Court can vary its order if such variation is necessary in the interest and welfare of the minor. The paramount consideration in such circumstances is the interest and welfare of the minor. It is the welfare of the child and not the rights of the parties that is required to be considered while deciding the application for the custody of the minor. Even in the cases where the order for the custody of the minor has been passed on the basis of the compromise arrived at between the parties, the order can be varied or changed if the welfare of the child demands the variation. The earlier order was passed for the custody of the child as the matter was compromised and both the parties agreed that the custody of the child may be given to the father, who is the natural guardian and is entitled for the custody of the minor son Rahul who was above five years of age till he attains the age of majority. The claim to the custody of the minor is not the claim to the property but it is in the nature of the trust for the welfare of the child.

7. As the orders passed by the Courts for the custody of the minors, are temporary orders made in the existing circumstances, therefore, the learned lower Court was not justified in rejecting the application filed by the petitioner. He should have considered the application on merit in the changed circumstances taking into consideration the interest and welfare of the minor. Merely because the father has contracted second marriage that itself cannot be a ground to divest him from his sacred duties to maintain and educate his minor child and the right to custody of a child during infancy unless he forfeits this right by his conduct or he neglects to discharge his obligation.

8. In the result, the appeal, filed by the appellant Smt. Gulshan is allowed and the case is remanded to the learned District Judge, Sri Ganganagar, to carefully weigh the various considerations and to decide the application so as to promote the welfare of the minor after giving an opportunity of hearing to both the parties.