

Anil Kumar Vs. Seema Rani

Anil Kumar Vs. Seema Rani

SooperKanoon Citation : sooperkanoon.com/952420

Court : Himachal Pradesh

Decided On : Jul-13-2011

Judge : Deepak Gupta

Appeal No. : CMPMO No. 172 of 2011

Appellant : Anil Kumar

Respondent : Seema Rani

Judgement :

Deepak Gupta, J.

Oral:

1. By means of this petition, the petitioner (hereinafter referred to as the father) has challenged the order dated 5th May, 2011 passed by the learned District Judge, Shimla, rejecting the application of the father to have the custody of the child for one day on weekends. The learned District Judge rejected the application mainly on the ground that he found no reason to vary the order dated 15.11.2010 passed by his learned predecessor.

2. The paramount consideration, nay the sole consideration, in the case of a custody of the child is the interest and welfare of the child. In this case both the parents are educated. The father is a lawyer by profession and the mother is a news reader. They may have their own differences, but the child has a right to

know and love both his parents. The ego of the husband and wife should never stand in the way of the affection of the child towards both his parents. The child was begotten out of a wedlock between two adults. Unfortunately, the marriage is not working out in the manner in which the adults felt it should. The child had no choice that he was born into a family where the marriage of the parents would break up. That is the unfortunate destiny of the child.

3. No doubt, since the child is about six years old and studying in class two, the mother has the right, at this stage, to keep the child because a child of such tender age needs the maternal care and affection which only a mother can provide. On the other hand, the father can also not be deprived of the company of the child. The child in question is a minor boy. There are certain things a boy can only learn from his father. There are certain pleasures which only a father and son can jointly enjoy. Whether it is cricket or any other game, it is the father who will bond with the boy more than the mother. Thus, it is necessary that the child should also enjoy the company of the father albeit for a lesser period of time.

4. In fact, it is in the interest of the child himself that he should grow up and learn to love both his parents. The father has shifted his practice from Chandigarh to Shimla and according to him, he has shifted to be with his son. Without accepting this contention to be correct, the fact is that now he resides at Shimla. Therefore, I feel, that as a beginning, an effort should be made to ensure that the father has the custody of the child for some time.

5. In view of the aforesaid discussion, I am of the considered view that the father should get the custody of the minor son for at least about eight hours in a week. He is, therefore, permitted to take the boy between 9.00 and 10.00 a.m. every Sunday from the residence of the mother and he shall ensure that the child is dropped back to the residence of the mother between 5.00 and 6.00 p.m. It is made clear that if it is found that the father is using dilatory tactics in the petition filed by the wife for divorce, the wife will be at liberty to approach this Court for modification of these orders.

In December, 2011, the husband can again file an application in this Court for alteration or modification of this permission, and for increase of the visitation

period.

6. With these observations, the petition stands disposed of. No costs.

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