

Ravinder Kumar Vs. Smt. Asha Devi

Ravinder Kumar Vs. Smt. Asha Devi

SooperKanoon Citation : sooperkanoon.com/952430

Court : Himachal Pradesh

Decided On : Aug-11-2011

Judge : Dev Darshan Sud

Appeal No. : FAO.No. 45 of 2011

Appellant : Ravinder Kumar

Respondent : Smt. Asha Devi

Judgement :

DEV DARSHAN SUD, J.

1. The appellant is the father of the minor Km. Suman and claims custody of the child. He instituted a petition in the Court of Learned Additional District Judge, Una on the allegation that the parties to this petition were married on 1.8.1999 according to Hindu rites and customs. They have co-habited together as husband and wife and out of the wedlock, Km.Suman was born on 14.10.2000. Initially, the relationship between the parties was affectionate and cordial. The pleading is that the respondent herein insisted that he separate from the parents of the appellant and on refusal to do so, she left the matrimonial home in the month of October, 2000, taking away the minor child with her. It is also undisputed that the respondent instituted a petition under Section 13 of the Hindu Marriage Act but according to the appellant herein, the allegations made against him are false and frivolous. A decree of divorce was granted to them by

the Lok Adalat on 8.11.2004 and the respondent took custody of the minor child Suman when she was only four years at the time when the divorce took place. On 28.11.2005, she remarried but according to the appellant, this relationship did not last long as the husband was not willing to accept the minor child. At present, the respondent is staying with her parents at village Bugdhar whereas the minor child is living with her Massi (maternal aunt). He pleads that his child is not receiving proper attention, she does not get enough food/clothes and the social conditions under which she is living are not congenial.

2. Reply was filed by the respondent herein stating that she was tormented by the appellant and her family members and persistent demand of dowry etc. was made. She was shunned by the family members when even food cooked by her was refused to be consumed by them. After the birth of the child, brother of the respondent left her at the maternal house along with dowry articles etc. which were retained by them but again, the behaviour of maltreatment did not cease. She then states that the appellant is a gambler and he even sold the tractor, harvesting machine and motor cycle etc. and the money which she had been given to her as gift(s) by her relatives etc. The petition has been filed solely for the purpose of avoiding paying maintenance to the minor child as granted by the Court.

3. On the settled issue as to whether the appellant was entitled to the custody, the learned Court, holds that it is admitted by the appellant herein that maintenance petition was filed against him for and on behalf of the minor child. He was ordered to pay a sum of Rs.700/- per month and finally Rs.1200/- per mensem as maintenance allowance to the minor child. He also admitted that after the divorce, he had contacted a second marriage and that the child was living with the respondent throughout till the date of the petition. The Court, examined the minor child in order to ascertain her wishes and after finding her as a person fit to understand the nature of the occurrence, recorded statement. The statement is reproduced in the judgment in the following words:

LANGUAGE

4. This fact by itself would be sufficient to show the interest exhibited by the appellant in the welfare of the child. The learned District Judge, holds and rightly so that he had even neglected to pay maintenance to the child and the petition was only a means of wriggle out of that responsibility.

5. I have heard learned counsel appearing for the parties and gone through the record of the case.

6. The undisputed fact as established without going into the allegations levelled by the parties against each other are that they are not living together, the child has been living with the mother through out, the marriage of the parties was dissolved by divorce, the appellant has re-married and that the child has stated in no uncertain terms that the child wants to stay with her mother/Massi and not with the father. I also find from the record that the appellant has made no effort during this period to either communicate with the child or to take any steps to meet her, so much so the child now forgets who her father is.

7. It is undisputed that it is the paramount duty of the Court to ascertain the welfare of a child, which is paramount and not merely the income factors of either spouse {See: Dr.Roghim Dandekar Vs. Dr. Raj Kavitha, AIR 2003 Karnataka 511, Rajinder Kumar Mishra V. Smt. Richa, AIR 2005 Allababad 379.}.

8. I need not multiply the precedent on this point as the law is well settled. The statement of the child when recorded in the Court is itself revealing. She does not even recognize her father or for that matter know who he is. This juncture to snatch her from the custody of her mother and Massi (maternal aunt) with whom she is living happily would be acting contrary to the established principles of law giving primacy to the welfare of the child. I find nothing in the submission made on behalf of the appellant or on the evidence on record that the continued custody of the child with the mother and Massi is to her detrimental. There is thus no merit in this appeal which is accordingly dismissed.