Smt. Sunita Devi Vs Shri Raj Pal Kaushal

F.A.O. No. 178 of 1977

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 12, 1978

Acts Referred:
Guardians and Wards Act, 1890 â€" Section 25

Hon'ble Judges: C.S. Tiwana, J

Bench: Single Bench

Advocate: B.S. Shant, for the Appellant; H.L. Sarin with Mr. M.L. Serin, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.S. Tiwana, J.
This appeal has been filed by Sunita Devi against the order dated 9th June, 1977, passed by the Senior Sub Judge,

Gurdaspur, whereby u/s 25 of the Guardians and Wards Act custody of her son was directed to be given to Raj Pal who had applied for it in the

month of October. 1976. The marriage between Raj Pal and Sunita Devi was dissolved by a decree of divorce in the month of January 1976.

Madan Mohan is the name of the child whose custody is at present to be decided upon. He was born on 22nd December, 1971 and is thus at

present aged about six years. Both the parties re-married after the passing of the decree of divorce.

2. The first point for determination in this appeal is whether in the circumstances of this case the respondent could apply for the custody of the child

on the ground that he had been removed from his custody. It had been mentioned in the petition itself that from the time of the birth of the child till

the date of the filing of the petition the respondent had not seen the face of the child The learned counsel for the appellant draws this inference from

this kind of pleasing that at no point of time the father had lived with the child and hence there could not be a constructive removal of the child from

his custody when the mother refused to deliver the custody of the child to his natural guardian. A reference has been made by the learned counsel

for the appellant to Shivawwa Balappa Rampur v. Chenbasappagowda Sangangowda Gowdar AIR 1941 Bom. 344 wherein this finding was

given that if the custody of the child was never with the guardian section 25 of the Guardians Wards Act would not apply. According to this

authority, it could not be said that a minor who has never been in the custody, of his guardian has either left or been removed from such custody. I

am of the view that it was for exaggerating the grievance against the appellant that the respondent tried to build up this kind of case that she had

never allowed him to see the child. Raj Pal while giving his evidence as A.W. 1 deposed that even though the child was born on 22nd December

1971, yet he was with his mother only from the year 1972. Even Sunita Devi while giving her evidence as R.W. 1 said that the child from the age

of six months remained in her sole custody and that her husband never thereafter came to see him. It is thus apparent that it is not such a type of

case that the child was born to the woman after the separation of the parties. For some period both the parents lived together after the birth of the

child. The Bombay case referred to above cannot, therefore, be applied to the facts of the present case.

3. For judging the merits of the case it was pointed out by the learned counsel for the appellant that the second husband of he appellant was

employed in the Army as a Havildar and he got the child admitted at the Central School, Pathankot. According to him the respondent will not be

able to educate the child in a better school. According to Rajpal, he is employed in the treasury office at Gurdaspur and daily goes back to his

village where he resides. His wife is employed as a teacher, but it is not clear from the record whether she is residing in the same village as her

husband. This much is clear from the evidence given by Rajpal that he is receiving a monthly salary of about Rs. 475/-. His father owns about 25

acres of land and naturally he is benefited from the income of that land especially when he is the only son of his father. Furthermore, the father of

the respondent is also residing with the respondent himself. I do not consider it to be for the welfare of the child to allow him to reside with his

mother who has re-married and there is no guarantee that the second husband of the appellant would treat the child in a better manner than the

respondent himself. I thus confirm the order passed by the Gurdian Judge and do not see any sufficient reason to hand over the custody of the child

to the appellant. The appeal is consequently dismissed. There shall, however, be no order as to costs.