

**(2002) 09 AHC CK 0189**  
**Allahabad High Court**  
**Case No:** F.A.F.O. No. 814 of 1999

Gomti Devi Gupta and Another

APPELLANT

Vs

Surya Prakash Gupta Guardians  
and Wards

RESPONDENT

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**Date of Decision:** Sept. 20, 2002

**Acts Referred:**

- Guardians and Wards Act, 1890 - Section 25, 29

**Citation:** (2002) 5 AWC 3836

**Hon'ble Judges:** B.K. Rathi, J

**Bench:** Single Bench

**Advocate:** W.H. Khan, for the Appellant; Atul Srivastava, for the Respondent

**Final Decision:** Allowed

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**Judgement**

B.K. Rathi, J.

The applicants moved an application for appointment of guardian of the two twin minOrs Km. Rinky and Ashu u/s 29 of the Guardians and Wards Act, 1890 (hereinafter referred to as the "Act"). The opposite party opposed the application claiming that he being father of minOrs is natural guardian and as such is entitled to their custody. The trial court (District Judge, Fatehpur) recorded the evidence and considered the question of the welfare of the children in detail and rejected the application of the applicants on 2.8.1999. This order has not been challenged during arguments before me.

2. On that very day, District Judge, Fatehpur, has passed another order on Application 26C of the opposite party. This order was passed in the absence of the applicants and it was mentioned in the order that this order be served on applicants through special Commissioner. By this order, the applicants were directed to hand over the custody of the two minOrs to the opposite party on 7.8.1999 at 11 a.m. The applicants are aggrieved by this order and have challenged the same in this appeal.

3. I have heard Sri W. H. Khan, learned Counsel for the applicants and Shri Atul Srivastava for opposite party. It has been argued that the opposite party contested the application of the applicants, which was moved by them u/s 29 of Guardians and Wards Act and it was rejected. That the opposite party did not move any application under Sections 9 and 15 for appointment of guardian nor he was appointed guardian by the earlier order dated 2.8.1999. That no application was moved by the opposite party u/s 25 of the Act for the custody of the minOrs. That on simple application, the learned District Judge has ordered for delivery of the custody of the minOrs to the opposite party without opportunity of hearing to the applicants. It has been argued that the order is without jurisdiction.

4. In my opinion, the argument of the learned Counsel for the applicant is correct. No doubt, the opposite party is the natural guardian of the minOrs being their father but even then, he should have claimed custody of the minOrs by moving an application u/s 25 of the Act which could have been disposed of after hearing the parties. No such application was moved.

5. Apart from this, the matter was finally decided on 2.8.1999. The learned District Judge on that date afterwards passed different order behind the back of the applicants. The said order, therefore, cannot be retained.

6. Accordingly, the first appeal from order is allowed. The subsequent order of 2.8.1999 on application 26C is quashed. However, notwithstanding any observation made above, the opposite party may file application for appointment of guardian and/or for custody of the minOrs u/s 25 of the Act. If such an application is moved, it shall be disposed of in accordance with law expeditiously notwithstanding any observation made in the body of this judgment. The party shall bear their own costs.