

IN THE COURT OF THE JUDGE, FAMILY COURT, BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS(SB),
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 157 of 2010

Smt. Swapna Rath @ Panda,
W/o- Sri Deepesh Panda
At present residing at House No. B-23,
Trishni Residency, Phase-III,
At/P.O.-KIIT, Bhubaneswar-751024
Dist-Khurda.

... Petitioner

... Versus...

1. Sri Deepesh Panda, aged about 38 years,
S/o-Sri Gobinda Chandra Panda,
Permanent resident at Plot No. 353/3374,
Matrukrupa Bhawan, Sailasahi,
Jayadev Vihar, Bhubaneswar
P.S.-Sahid Nagar, Dist-Khurda,
At present working under Zenith Computer Ltd.
1-E, Century Plaza,560, Teynmpet, Chennai-18.
2. Shri Gobinda Chandra Panda, aged about 65 years,
S/o-Late Somonath Panda,
Permanent resident D. Mohan Reddy, aged about 30 years,
Permanent resident at Plot No. 353/3374,
Matrukrupa Bhawan, Sailasahi,
Jayadev Vihar, Bhubaneswar
P.S.-Sahid Nagar, Dist-Khurda.
3. Smt. Pramodini Panda, aged about 56 years,
W/o- Shri Gobinda Chanda Panda,
Permanent resident at Plot No. 353/3374,
Matrukrupa Bhawan, Sailasahi,
Jayadev Vihar, Bhubaneswar
P.S.-Sahid Nagar, Dist-Khurda

... Respondents

Date of argument : 06.09.2014

Date of order : 20.09.2014

J U D G M E N T

This order arises out of a petition u/s. 25 read with Section 7 of the of the Guardians & Wards Act filed by the petitioner for custody of minor son namely Somesh Panda.

2. The parties have not disputed their relation as husband and wife and out of their wedlock one son namely Somesh Panda was born on 22.03.2000 and both of them are living separately more than five years.

3. The gist of the case of the petitioner is that the respondent and his family members started ill-treating her due to additional demand of dowry for which she has been residing with her parental home. The petitioner has averred that she has been restricted to make any contact with her family members even if over telephone and they have also not permitted to go to her parents house or even talk with any family members for which she suffered mental agony. The behaviour of the respondent No.1 towards her was very non- cooperative. The petitioner has averred that the respondent No. 1 has got illicit relationship with a non- Oriya girl for which he avoided for any conjugal relationship with her. She tolerated the torture and cruelty made by the respondent No.1 and his family members with a hope to change in future. Even after birth of the child on 22.03.2000 the respondent No. 1 and his family members did not change in their behaviour towards her. She has averred that the respondent No. 1 was non co-operative, adamant, egoist, self-centered and cruel in nature for which she has been suffering mental and physical harassment. She has further stated that the respondents are not taking the proper care of the minor and neglected the child for which his health has been deteriorated and his minor son is now aged about 14 years old and is now reading in Stewart School, Bhubaneswar and the respondents are not taking proper care of his study. It is further stated that the respondent No.1 has now working at Chennai and the minor child is residing with his grandparents respondent No.2 and 3 who are in old age and are not able to look after the minor son. She has further stated that the respondent No.1 is

threatened her to leave the child in an Anath Ashram and to marry for the second time as per his sweet will.

4. The Respondents appeared and filed written statement admitting the relationship of the minor child. They contended that the child is well cared under the guardianship of respondent No.1 with the help of respondent No. 2 and 3. The respondent is monitoring the education and health of the child. The child is maintaining health and with excellent academic career. He is securing 95% to 99.5% of marks in his class examination. He is appearing different competitive examinations and awarded certificate of excellence in talent search examination, credit certificates from University of New South Wales, Australia in Intentional Assessment for Indian Schools. He is attending classes for drawing, painting and fine arts in Bhajan Kala Niketan IRC Village. He has filled up forms to appear the International Olympiad of Mathematics (I.O.M.) organized by Mathematics Olympiad Foundation, New Delhi and Chandigarh. There was no thought of second marriage. It is further contended that the petitioner had never desired her son but wants to blackmail the respondents making a conspiracy with herself her brother and mother. Respondents have taken all efforts to bring her back for the shake of the child but the petitioner remained adamant under pressure and instigation of her parents and brother. That she is a cruel, selfish and egoist lady, she has no love or affection for her son for which she could stay for years in spite of several requests to her and to her parents. In her parents house everything is acted upon as per the will and pleasure of the mother of the petitioner Smt. Sushama Rani Rath and brother Manoj Rath. The petitioner cannot take care of the welfare of the child as like as respondent No.1. Her parents house is about 15 kilometers away from the school in a road with heavy traffic and the house of the respondent No. 2 and 3 is only two kilometers in a road with less traffic intensity. There is no necessity of changing the school. Due to the ego of the petitioner already the child has been shifted to the third school. It is pertinent to mention that the parents and relatives of the petitioner were so cruel that they threatened to respondent No. 1 to kill him and kidnap the

minor child and once tried to materialized it. This was reported to the Inspector General of Police, Human Rights Protection Cell, Orissa on 20.05.2000 to give protection. If the minor child will be kept under the care of such cruel parents and relatives of the petitioner, there is danger of the life of the child. The cruel mother who acts like a puppet on the finger tips of her mother cannot give protection to the child and his welfare. Therefore respondent No. 1 apprehends that he may loose his on forever if he will be given under care of the mother. The child is the heir of the respondent No. 2 and 3 and their help to the respondent No. 1 for care of supervision is better than anyone else. Under the natural guardianship of the father (respondent No.1), the welfare of the minor covering material and physical wellbeing, education, health, happiness and moral welfare etc are properly cared.

5. The following points are to be determined for decision of this case:-

- (i) Whether the respondents are capable enough to look after the proper care of the minor son ?
- (ii) Whether the petitioner is entitled to take back the minor son to her custody and she is to be declared as guardian of the minor son?

6. The petitioner in order to buttress her case she, herself, has been examined as P.W.1. In order to negate the claim of the petitioner, the respondent himself examined as R.W. 1 and relied on some documents i.e. Ext. A is the Xerox copy of the order in C.P. No. 157 of 2010 dated 16.04.2011, Ext. B is the certified copy of the FIR by the petitioner to the OIC Dhenkanal, Ext. C is the certified copy of the order sheet of State Commission for Women, Ext. D series are the certified copy of the progress report and the certificates of Somesh Panda, Ext. E are the photographs of Somesh Panda.

7. Petitioner has stated that the respondents are neglecting the minor son for his education and with an ulterior motive forcibly took the minor son to their custody. The respondent No. 1 has stated that the petitioner while staying with him, tortured him both mentally and physically. He draws the attention of the court that he has already got a decree of divorce on the ground of cruelty. It is an admitted fact that both the parties are staying

separately since long. Respondent No.1 has stated that he is taking much responsibility for the career development of the minor child and he has proved the successful educational carrier of the minor child. He has further stated that, at present the minor son is in growing stage of his education and at this stage, handing over the custody of the child in favour of the petitioner.

8. No doubt, though the father is the legal guardian, law requires that the custody of a minor child above six years should normally be with the father. But, when circumstances are exceptional and when there are strong reasons to make the father unfit to have the custody, it is the paramount duty of the court to entrust the child to the mother. In the instant case, the exceptional circumstance which goes against the petitioner that she will not take the proper care of the minor child. The educational certificate is marked under Ext. D series demonstrate the educational progress of the child in bright prospective, had the child not been taken proper care by the respondents, the child would not have come up with such bright carrier. The petitioner has not attributed anything against the respondents that they left the child un-cared for. The aspect which is more significant is whether the child will get an atmosphere of care love and affection to grow in a healthy manner. The cultural and social back grounds of the family also play an important role. The cultural and social back ground of the family of the respondents is better than the petitioner. Therefore, the right of the petitioner to the custody of the child if recedes then the child will be in precarious psychological trauma. Therefore, in my considered opinion, I feel that the interest of the minor will be served best if he continues to remains with the respondents but with sufficient access to the petitioner at frequent intervals but so as not to disturb and disrupt his normal studies and other activities. Hence, ordered;

O R D E R

The petition of the petitioner is dismissed on contest without any cost. The petitioner is at liberty to visit the child. The respondents are directed to leave the child in the company of the petitioner on every Sunday on or before 5 P.M. and hand over the child on the same day on or before 8 P.M. The

petitioner is also entitled to keep the child in her custody for five days each during winter vacation, Dusserah, Christmas vacation and for 20 days continuously in summer vacation.

JUDGE, FAMILY COURT,
BHUBANESWAR

Dictated, corrected by me and is pronounced on this the 20th day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Swapna Rath

Witnesses examined for the respondent:

R.W. 1 Sri Deepesh Panda

List of documents by petitioner:

Nil.

List of documents by respondent:

Ext. A Xerox copy of the order in C.P. No. 157 of 2010 dated 16.04.2011

Ext. B Certified copy of the FIR by the petitioner to the OIC Dhenkanal,

Ext. C Certified copy of the order sheet of State Commission for Women
(5 sheets)

Ext. D Certified copy of the progress report and Certificates of Somesh
Panda (30 sheets)

Ext. E Photograph of Somesh Panda

JUDGE, FAMILY COURT,
BHUBANESWAR