

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

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

Civil Proceeding No. 161 of 2013

Smt. Lobha Bhoi, aged about 33 years,
D/o-Maguni Bhoi,
Vill.-Satyabhamapur,
P.S.-Balianta, Dist-Khurda,
Odisha.

... Petitioner

... Versus...

1. Nabakishore Bhoi, aged about 35 years,
2. Bhabagrahi Bhoi, aged about 37 years,
S/o-Late Kasinath Bhoi,
At/P.O.-Biranarsinghpur,
P.S.-Chandanpur,
Dist-Puri.

... Respondents

Date of argument : 25.08.2014

Date of order : 05.09.2014

O R D E R

This order arises out of a petition U/s. 6 of the Hindu Minority and Guardianship Act, 1956 (in short, the Act 1956) filed by the petitioner to declare her as the guardian of minor son namely Surya Ranjan Bhoi (Rabi).

2. The facts of the case of the petitioner that she got married to respondent No.1 as per Hindu customs and rites on 12.10.1999 and out of their wedlock one male child namely Surya Ranjan Bhoi (Rabi) was born on 08.10.2006 at Biranarsinghpur. She has further averred that at the time of marriage her father had given 300 grams of gold ornaments along with other household articles amounting Rs. 6,50,000/- to the respondent No.1. The der-Tag started in their life when the Opp. Party No.1 and his family members demanded additional dowry of Rs. 1,00,000/- for buying a plot and non fulfillment

thereof subjected to the petitioner with physical and mental torture. Her brother had given Rs. 1,00,000/- to respondent No.1 but few days thereafter again respondent No.1 sent the petitioner to her parental home with respondent No.2 and after a long period the respondent No.1 on 03.06.2004 and 15.05.2005 came to her house and quarreled with her and with her family members. On 10.06.2006 both the respondents went to her house and had taken un-lawful action against her. On 10.08.2006 she returned to her matrimonial house after two months staying in her parental home and again respondent No. 1 and 2 had started torturing her for which she went back to her parental home on 15.09.2006. Both the respondent No.1 and 2 quarreled with her and her family members and also assaulting her in front of her family members as well as in front of the family members of her in-laws and snatched away Rs. 40,000/- from her brother and took all the gold ornaments weighing 300 grams and $\frac{1}{2}$ Kg of silver ornaments. She has further averred that the respondent No. 1 and 2 also threatened to kill her and her child. On 17.04.2009 the respondent No.1 after assaulting to her, took away her child from her custody and sent to her to her parental house in presence of other persons in the locality. She has further averred that the respondent No.1 is a motor garage mechanic and is earning meager amount, for which, he is not financially sound and he is not looking after the care of the minor child properly. Being the mother, she prays to appoint him as guardian of the child for his well being.

3. The Opp. Party did not enter contest the petition and therefore, is set ex-parte.
4. The following points are to be determined for decision of this case:-
 - (i) Whether petitioner is the legally married wife of the respondent No.1 and Surya Ranjan Bhoi (Rabi) is the legitimate child of the respondent?
 - (ii) Whether the respondent has forcibly taken away the minor son Surya Ranjan Bhoi from the custody of the petitioner and he is capable enough to look after the proper care of the minor son?
 - (iii) Whether the petitioner is entitled to take back the minor son to her custody and be declared as guardian of the minor son?

5. The petitioner in order to buttress her case she, herself, has been examined as P.W.1 and her father as P.W. 2.

6. The petitioner in her affidavit evidence has stated that on 12.10.1999 she married to the respondent at Satyabhamapur and out of their wedlock one son namely Surya Ranjan Bhoi (Rabi) was born on 08.10.2006. Her aforesaid statements have not been challenged. Thus, it can safely be concluded that the petitioner is the legally wedded wife of the respondent and out of their wedlock Surya Ranjan Bhoi (Rabi) was born to them on 08.10.2006.

7. The petitioner has further stated that on 17.04.2008 the respondent after brutally assaulting her forcibly taken away the child from her custody and since then she has been depriving of any love and affection of the child. P.W.1 has further stated that in spite of her efforts, the respondents and his family members did not give the minor son to her custody. She had approached before different forums with request to take back her son, but in vain. The above evidence of P.W.1 remains unchallenged and there is no reason to disbelieve the evidence of P.W.1. From the above evidence of the petitioner, it is forthcoming that the respondent No.1 on 17.04.2009 in front of gentries after assaulting the respondent took away the minor son from her custody. Petitioner has stated that the respondent did not take any proper care of the minor son and neglected him. P.W. 2 has supported the above evidence of P.W.1.

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 that 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 is that she did not have any independent income to support herself and child. She is simple a house wife having no educational back ground. The petitioner has not attributed anything against the respondent 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 petitioner is not better. 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 remains with the respondent 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 is dismissed on ex parte in favour of the respondent but with certain direction which are:- (i) The petitioner has every right to see the minor son as and when desired and the respondent is 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 before 8 P.M. (ii) 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 5th day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Lobha Bhoi

P.W.2 Maguni Bhoi

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil.

List of documents by respondent:

Nil.

JUDGE, FAMILY COURT,
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