

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

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

Civil Proceeding No. 500 of 2014

Lalit Mohan Champaty, aged about 27 years,
S/o-Krushna Chandra Champaty,
of Patia, P.S.-Chandrasekharapur,
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

1. Smt. Rasmita Champaty, aged about 26 years,
W/o- Sri Lalit Mohan Champaty
D/o-Late Rabindra Kumar Jena
2. Satyajit Champaty, aged about 4 years,
S/o-Lalit Mohan Champaty,
C/o-Pradeep Khuntia,
Vill.-Alasua, P.S.-Baidyeswar,
Dist-Cuttack.

... Respondents

Date of Argument: 17.03.2015

Date of Judgment : 30.03.2015

J U D G M E N T

The petitioner has filed a petition U/s. 7 read with Section 10 of the Guardian and Wards Act, 1890 (in short, the Act 1890) praying to declare him as the guardian of minor son namely Satyajit Champaty.

2. The facts of the case of the petitioner are that he got married to respondent No.1 as per Hindu customs and rites on 21.06.2008 and out of their wedlock one male child namely Satyajit Champaty (Respondent No.2) was born on 24.07.2010. Now he is aged about 4 years. It is the further case of the petitioner that after some days of marriage, the respondent No.1 started torturing him and his family members both physically and mentally without rhyme or reason. The respondent

No.1 expressed before him that she did not want to live with his family members and if he did not fulfill her demand then she would file false cases against him before the Police Station as well as in the Court of Law. The respondent No.1 during her stay in this house did not give any respect to him as well as to his family members and also never discharged her matrimonial obligations. After birth of the respondent No.2, the respondent No.1 became more violent and misbehaved him and his family members. When he came to know the illicit relationship of the respondent No.1 with one Pradeep Khuntia, an Auto Driver, he asked the respondent No.1 about it admitted the same and expressed her desire to leave him to join with Pradeep Khuntia. When he requested her to abstain from such ill activities, the respondent No.1 told him not to interfere otherwise she would lodge false report against him and his family members before the Mahila Police Station and dragged them behind the bar. He has further averred that for the betterment of the respondent No.2 he has admitted him at Saraswati Sishu Mandir, Patia, Bhubaneswar in Class L.K.G. He and his family members are taking utmost care of the respondent No.2. On 29.06.2014, the respondent No.1 left his house with said Pradeep Khuntia leaving behind his minor son. Thereafter he lodged an FIR at Chandrasekharpur Police Station regarding missing of the respondent No.1 for which she became violent and threatened him and his family members to put behind the bar. Consequently, the respondent lodged a written report before Mahila Police Station for which he and his family members were dragged to the Mahiala Police Station. Taking such advantage, the respondent No.1 forcibly entered into his house on 06.07.2014 and forcibly had taken away the respondent No.2 with a threat to the other family members who were present at that time. Thereafter several attempts have been made from his side to bring back the respondent No.1 and 2 to lead a happy conjugal life but all were in vain due to refusal of the respondent No.1. According to the petitioner the respondent No.2 is kept under the custody of the respondent No.1 which is far away from his school and the respondent No.1 also has no independent source of income to spend a single pie for the proper education of the respondent No.2 as she is depending upon the said Pradeep Khuntia with

whom she is living adulterous life. He has further stated that the respondent No.1 is destroying the education of his son (respondent No.2) Being the father, he prays to appoint him as guardian of the child for his well being and to the custody of the minor child be given to him.

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 respondent No.1 is the legally married wife and the respondent No.2 Satyajit Champaty is the legitimate son of the petitioner?
 - (ii) Whether the welfare of the respondent No.2 who is a minor child aged about 4 years be protected in the custody of the petitioner?
6. The petitioner in order to buttress his case he, himself, has been examined as P.W.1 and relied on three documents. They are:- Money receipts of School fees of Satyajit Champaty dated 11.07.2014, 12.08.2004 and 11.09.2014.
7. The petitioner in his affidavit evidence has stated that he married to the respondent No.1 on 21.06.2008 and out of their wedlock one son namely Satyajit Champaty was born on 24.07.2010. Her aforesaid statements have not been challenged. Thus, it can safely be concluded that the respondent No.1 is the legally wedded wife of the petitioner and out of their wedlock Satyajit Champaty was born to them on 24.07.2010.
8. The petitioner has further stated that on 06.07.2014 the respondent No.1 has forcibly taken away the child from his house and since then he has been depriving of any love and affection of the child. P.W.1 has further stated that in spite of his efforts, the respondent No.1 did not give the minor son to his custody. Thereafter several attempts have been from his side to bring the respondent No.1 and 2 but all were 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 06.07.2014 has forcibly taken away the minor son from

his custody. Petitioner has stated that the respondent No.1 did not take any proper care of the minor son and neglected him.

9. No doubt, though the father is the legal guardian, law requires that the custody of a minor child below six years should normally be with the mother but, when circumstances are exceptional and when there are strong reasons to make that the mother unfit to have the custody, it is the paramount duty of the court to entrust the child below six years to the father. In the instant case, the exceptional circumstance which goes against the respondent No.1 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 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 respondent No.1 is not better. Therefore, the right of the respondent No.1 to the custody of the child if recedes then the child will be in precarious psychological trauma. The respondent No.1 is residing with her paramour and is depending on the income of her paramour. Therefore, in my considered opinion, I feel that the interest of the minor will be served best if he remains with the petitioner but with sufficient access to the respondent No.1 at frequent intervals but so as not to disturb and disrupt his normal studies and other activities. Hence, ordered;

ORDER

The petition is allowed on ex parte in favour of the petitioner but with certain direction which are:- (i) The respondent No.1 has every right to see the minor son as and when desired and the petitioner is directed to leave the child in the company of the respondent No.1 on every Sunday on or before 5 P.M. and hand over the child before 8 P.M. (ii) The respondent No.1 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 30th day of
March, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Lalit Mohan Champaty

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 to 1/b Money receipts of School fee of Saraswati Sishu Mandir
dated 11.7.2014, 12.08.2014 and 11.09.2014

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.