

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

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

Civil Proceeding No. 105 of 2011

D. Suguna Reddy, aged about 27 years,
W/o- D. Mahan Reddy
Plot No. 498, Cluster-II, Sikharchandinagar,
P.S.-Infocity, Bhubaneswar,
Dist-Khurda
At present residing at
D/o-Late S.Gangeya Reddy, Plot No. 274,
Sikharchandi, P.S.-Infocity, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

D. Mohan Reddy, aged about 30 years,
S/o-D. Dilaya Reddy, Plot No. 498,
Cluster-II, Sikharchandinagar, P.O.-KIIT,
P.S.-Infocity, Bhubaneswar, Dist-Khurda.

... Respondent

Date of argument : 14.08.2014

Date of order : 18.08.2014

ORDER

This order arises out of a petition u/s. 25 of the Guardians & Wards Act filed by the petitioner for custody her of minor son namely D. Kiran Reddy.

2. The facts of the case of the petitioner are that she married to the respondent at Sikharchandi Church as per Christian Customs and traditions and consummated their marriage in the residence of Opp. Party and out of their wedlock two children namely D. Kiran Reddy and D. Puja Reddy were born. Petitioner has averred that at the time of marriage, her father had given cash of Rs. 20,000/-, gold ornaments and other household articles. The marriage was a serendipity. The der-Tag started in their life when the Opp. Party and his family members demanded more dowry of Rs. 2,00,000/- and non fulfillment thereof subjected to the petitioner with physical torture and

when the petitioner showed her inability to fulfill their additional demand, the respondent and his family members drove her out from his house after brutally assaulting her on 17.04.2008 and finding no alternative and since then she has been residing with her two children at her parental home. She has further averred that she regularly goes to school of her son and brought him back from school after school hours but on 17.07.2009 when she went to school to bring back her son, she found that the Opp. Party along with some antisocial friends forcibly had taken her minor son D. Kiran Reddy from school and kept him in his house and when she requested the Opp. Party and his family members to return the child to her custody, they turned down her request, for which she immediately reported the matter to the Mahila Police Station but the Mahila Police Station did not take any action and subsequently she intimated the matter to Mahila Commission but the Mahila Commission did also not take any action to bring back the child to her custody. Thereafter she has filed a petition U/s. 97 Cr.P.C. before learned S.D.J.M, Bhubaneswar and after hearing the same the learned S.D.J.M. has passed an order to file before the proper forum for which she has filed this application. She has further stated that the respondent is 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 6 years old and is now reading in Class-II in the Sikharchandi Bidyapitha and the respondent is not thinking for his study.

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 legal married wife of the. respondent and D. Kiran Reddy and D. Puja Reddy are the legitimate children of the respondent?
- (ii) Whether the respondent has forcibly taken away the minor son D. Kiran Reddy 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 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.

7. The petitioner in her affidavit evidence has stated that she married to the respondent at Sikharchandi Church on 06.02.2003 and out of their wedlock one son namely D. Kiran Reddy and one daughter namely D. Puja Reddy were born. 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 D. Kiran Reddy and D. Puja Reddy are their legitimate children and their marriage was solemnized on 06.02.2003.

8. The petitioner has further stated that on 17.4.2008 the respondent brutally assaulted her to bring Rs.2,00,000/- from her parents and drove out her from his house and she went to her father's house and started residing there with two children since then. P.W.1 has further stated that on 17.7.2009, the respondent along with some antisocial friends had forcibly taken her minor son from the school and in spite of her efforts, the respondent 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 vein. The above evidence of P.W.1 remains unchallenged. 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 with some antisocial friends, took away the minor son from the School. Petitioner has stated that the respondent 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 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 circumstances which goes against the respondent is that he did not take any proper care of the minor child and neglected him and deserted him. The respondent has not attributed anything against the petitioner that she left the child un-cared for. On the other hand, the respondent who cunningly had taken away the minor child when he was six years old at which age he ought to be in the custody of the mother to whom the respondent has deserted on

the pep-talk of his parents. 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 ground of the family also play an important role. The cultural and social back ground of the family of the respondent is not better. Therefore, the right of the respondent 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 petitioner but with sufficient access to the respondent 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 allowed on ex parte in favour of the petitioner. The respondent is directed to hand over the custody of the child to the petitioner within a month hence and petitioner is directed to take the child to her custody till he attains majority. The respondent has every right to see the minor son and the petitioner is directed to leave the child in the company of the respondent on every Sunday on or before 5 P.M. and hand over the child before 8 P.M. The respondent is also entitled to keep the child in his 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 18th day of August, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 D. Suguna Reddy.

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil.

List of documents by respondent:

Nil.

JUDGE, FAMILY COURT,
BHUBANESWAR.