

**IN THE COURT OF MS. DEEPIKA SINGH,
CIVIL JUDGE (SENIOR DIVISION), SAS NAGAR (MOHALI)
UNIQUE IDENTIFICATION NO. PB0222
(Exercising the Powers of Guardian Judge under the Guardian and Wards Act)**

CNR No. PBSA02-000526-2019

CIS No. GW/12/2019

Case No. 55 of 16.03.2019

Decided on: 05.03.2020

1. Satish Kumar Saini, aged 63 years, son of late Shri Nanak Chand, resident of House No. HL-401, Phase-9, Mohali (Punjab).
2. Rani Devi, aged about 60 years, wife of Shri Satish Kumar Saini, resident of House No. HL-401, Phase-9, Mohali (Punjab).

... Petitioners.

Versus

1. Rupinder Kaur daughter of Late Shri Rajinder Singh, aged about 33 years, resident of House No.165, Village Badheri, Sector 41-D, Chandigarh.
2. Sandeep Saini son of Shri Satish Kumar Saini, aged 37 years, resident of House No. HL-401, Phase-9, Mohali.
3. General Public.

... Respondents.

Petition under Section 7 and 12 of the Guardian and Wards Act, 1990 read with Section 6 and 13 of Hindu Minority and Guardianship Act, 1966, seeking appointment of the petitioners for guardian of the person of “Master Harshit Saini and Ms. Himani Saini” both minors, and granting permanent custody of both minors to the petitioners.

Present: Ms. Arti Rampal Advocate, Learned counsel for petitioners.

Respondents No.1 to 3 exparte.

JUDGMENT

The instant petition has been filed by the petitioners under Section 7 and 12 of the Guardian and Wards Act, 1990 read with Section 6 and 13 of Hindu Minority and Guardianship Act, 1966, seeking appointment of the petitioners as guardian of the person of “Master Harshit Saini and Ms. Himani Saini” both minors, and granting permanent custody of both minors to the petitioners.

2. Briefly stated, facts of this case are that petitioners are grand parents of the minor children mentioned in the head note of present petition. Through the instant petition, the petitioners are humbly seeking indulgence of this Court for their appointment as Guardian of the person of two minor children, namely, Harshit Saini and Himani Saini and for grant of permanent custody of said minors to the petitioners, keeping in view welfare of the minors. On 29.01.2012, respondents No.1 & 2 were married to each other at Gurudwara Sahib, Village Badheri, Sector 41, Chandigarh according to traditional Sikh rites and ceremonies in presence of friends and family members of both the parties. Further, out of the above said wedlock, two children namely, Himani Saini (daughter, now aged about 4 years) and Harshit Saini (son aged about 2 years) were born. The respondent No.1 is Sikh by birth and respondent No.2 is Hindu by birth. For about four years after the marriage, both the respondents cohabited and lived together at the petitioners' house and the relations between them remained cordial. On 11.07.2016, for unknown reasons to the knowledge of petitioners, respondent No.2 left the petitioners' house, not even disclosed as to where he

had started living outside. The petitioners as well as the respondent No.1 tried to search the respondent No.2 but in futile, so respondent No.2 never returned back home, virtually deserting respondent No.1. After substantial period of time, the petitioners got awarded of such undisclosed activities, conduct and whereabouts of respondent No.2, thus on 24.11.2017, even petitioners legally disowned respondent No.2 as their son. The respondent No.2 did not return back home even after newspaper publications, leaving the respondent No.1 and their two children in lurch of loneliness and desertion. It is further stated that feeling upset and lonely without his husband, respondent No.1 also left home on 04.08.2018 and started living alongwith her parents at Chandigarh, leaving her both children with petitioners at her matrimonial home. The petitioners are happily taking personal care of both minor grand children and always desirous of supporting them throughout the lifetime as guardian of their person. Both the respondents No.1 & 2 have totally neglected the minors and welfare of minors lies with the petitioners. The respondent No.1 already filed the divorce petition against respondent No.2-husband under Section 13 of the Hindu Marriage Act, 1955 seeking dissolution of the marriage. Further, during last panchayat convened on 22.08.2018 at behest of family, elders and respectable members of the society, the petitioners on asking of respondent No.2 already returned back all the Istridhan items including jewellery etc. to the respondent No.1 and the same have been duly accepted alongwith another payment of Rs.10 lacs, the respondent No.2 having duly undertaken therein that she would have no objection if the future legal

custody and guardianship of both children namely, Himani Saini and Harshit Saini awarded to the family of petitioners. The guardianship of both minor children is sought by the petitioners, who have been residing with them since their birth. According to the best knowledge and belief of the petitioners, neither guardian of the person of minors has been appointed nor any such application for such appointment has been filed prior to the instant petition. Hence, the present petition.

3. Upon notice, respondent No.1 has appeared through her counsel, whereas none had appeared on behalf of respondents no.2 and 3 despite service through publication in newspaper and as such, respondents no.2 and 3 were proceeded against exparte. The respondent no.1 has filed written statement taking preliminary objections to the effect that present petition is not maintainable in the present form, petitioners have not come up with clean hands and have not disclosed the true facts before this court. As per panchayati compromise, it was decided that petitioners will help the answering respondent in getting divorce from Sandeep Saini, whereas almost one year has been passed and the petitioners are not helping the answering respondent to get divorce from Sandeep Saini (husband of the answering respondent and respondent No.2 in the present petition. In such circumstances, the petitioners themselves are not fulfilling the conditions of the compromise dated 22.08.2018. The respondent No.2 is son of the petitioners and he is not appearing in the divorce petition filed by the answering respondent. Further, it is stated that the answering respondent

never neglected her minor children during her matrimonial life, no cause of action has arisen in favour of the petitioners to file the present petition and no proper court fee has been affixed in the present petition. On merits, it is pleaded that petitioners and respondent No.1 are residing at the addresses mentioned in the petition, whereas regarding the address of the respondent No.2 petitioners intentionally not disclosed his correct address for the purpose of service of summons. The petitioners themselves backed out from the compromise deed as well as not disclosing the whereabouts of the respondent No.2. It is submitted that from the starting of the married life, respondent No.2 was not having cordial relations with the answering respondent and he spent most of time outside the matrimonial home without intimating the answering respondent. The petitioners are very well aware about the whereabouts of respondent No.2 and he remained in touch with the petitioners till date, whereas petitioners are creating false story just for one reason or the other. The petitioners forced the answering respondent in connivance with respondent No.2 to leave the matrimonial house without the custody of the children. Both the children are residing with the petitioners without proper consent of the answering respondent. The answering respondent never neglected her minor children, rather answering respondent was forced to leave the matrimonial house without any financial as well as medical assistance. As assured, the petitioners never helped the answering respondent for getting divorce from respondent No.2 and the petitioners themselves did not fulfill the condition of the said compromise dated 22.08.2018. At last, prayer for dismissal of present petition has been made.

4. Rejoinder to the written statement was filed while denying preliminary objections and other averments made therein and reiterating those made in the petition. From the pleadings of the parties, the following issues were framed:-

1. Whether the petitioners are entitled to be appointed as guardian of Master Harshit Saini and Ms. Himani Saini?

OPP

2. Relief.

5. In order to prove his claim, petitioner Satish Kumar Saini has himself stepped into the witness box as PW-1 and tendered into evidence the following documents:-

Mark P1 Copy of marriage certificate issued by Gurudwara Sahib, village Badheri, Chandigarh.

Ex.P1 Copy of birth certificate of Himani Saini.

Ex.P2 Copy of birth certificate of Harshit Saini.

Ex.P3 Copy of aadhaar card of Satish Kumar Saini.

Ex.P4 Copy of aadhaar card of Rani Devi.

Ex.P5 Certified copy of petition U/s 13 of H.M. Act.

6. When the case was fixed for cross-examination of PW-1 Satish Kumar Saini, none had appeared on behalf of respondent no.1 Rupinder Kaur and as such, respondent no.1 Rupinder Kaur was proceeded against exparte vide order dated 9.1.2020.

7. On 9.12.2019, respondent no.1 Rupinder Kaur has come present and made a statement that she has no objection, if the custody of her children namely Himani Saini aged about 3 years and Harshit Saini aged about 5 years, is permanently given to her in-laws namely Satish Kumar Saini and Rani Devi. The minor children are already residing with the petitioners namely Satish Saini and Rani Devi. She has also stated that she is giving the statement with her own free will and without any pressure.

8. I have heard the learned counsel for the petitioners and have gone through the case file, carefully.

9. In view of the statement suffered by respondent no.1 Rupinder Kaur, the present petition stands allowed and petitioners Satish Kumar Saini and Rani Devi are hereby appointed as guardian of minors Harshit Saini and Himani Saini for person. The custody of both the minor children namely Harshit Saini and Himani Saini is permanently granted to petitioners Satish Kumar Saini and Rani Devi. File be consigned to the Judicial Record Room, SAS Nagar (Mohali).

Pronounced in open Court.

Dated: 05.03.2020

Tajinder Singh

(Deepika Singh)
Civil Judge (Senior Division)
SAS Nagar (Mohali)
UID No. PB0222