

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 1793/2024

Leelawati Devi W/o Late Jagdev Singh, Aged About 70 Years, R/o Jakhron Ki Dhani Tan Dhmore, P.s. Gudha, Distt. Jhunjhunu, Currently R/o 68/542 G.h. Housing Board Kalapi Nagar, Asarava P.s. Meghani Nagar, Ahamadabad (Gujrat)

----Appellant

Versus

Smt. Poonam Devi W/o Late Raghuveer Singh, R/o Jakhron Ki Dhani Tan Dhmore, P.s Gudha, Distt. Jhunjhunu, Currently R/o Villag Kolosiya, P.s. Nawalgarh, Distt. Jhunjhunu (Raj.)

----Respondent

For Appellant(s)	:	Mr. Yellop Singh Ms. Leelawati Devi } present in person
For Respondent(s)	:	Ms. Meeta Pareek Smt. Poonam Devi W/o Late Raghuveer Singh } present in person

HON'BLE MR. JUSTICE INDERJEET SINGH
HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

09/04/2025

1. This appeal has been filed by the appellant (hereinafter to be referred as grandmother) challenging the order dated 12.01.2024 passed by the learned Family Court whereby the application filed on behalf of the grandmother under Section 7 and 10 of the Guardians and Wards Act, 1890 (hereinafter to be refereed as the Act of 1890) was dismissed.
2. Brief facts of the case are that the grandmother filed an application under Section 7 and 10 of the Act of 1890 before the court below seeking custody of the girl child i.e. her grand

daughter which was dismissed by the court below on the ground that the mother of the child is in government service, working as teacher and looking to the best interest of the child, the application filed on behalf of the grandmother was dismissed. Hence, the present appeal has been filed by the grandmother challenging the order dated 12.01.2024.

3. Counsel for the grandmother submits that the learned court below has committed serious illegality in dismissing the application filed by the grandmother. Counsel further submits that the grandmother is having agriculture land in which the share of mother of the girl child is also there. Counsel further submits that the family business of the grandmother is also there and they can better take care of the girl child.

4. Counsel for the respondent, mother of the child, supports the judgment passed by the court below. Counsel further submits that the mother of the girl child is working as government teacher. Counsel further submits that the girl child now aged about 10 years and studying in private school and best interest of the child is with the mother and prayed for dismissed of the appeal.

5. Heard counsel for the parties and perused the record.

6. The Hon'ble Supreme Court of India, in the matter of '**Col. Ramneesh Pal Singh versus Sugandhi Aggarwal**', reported in **2024 6 SCR 259**, in paragraphs no.10 and 11 held as under:-

"10. In this context, it would be appropriate to refer to a decision of this Court in Nil Ratan Kundu (Supra) wherein parameters of 'welfare' and principles to be considered by courts whilst deciding questions involving the custody of minor children came to be enunciated. The

relevant paragraph(s) are reproduced as under:

“52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child’s ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor. Xxx

55. We are unable to appreciate the approach of the courts below. This Court in a catena of decisions has held that the controlling consideration governing the custody of children is the welfare of children and not the right of their parents.

56. In *Rosy Jacob* [(1973) 1 SCC 840] this Court stated: (SCC p. 854, para 15)

“15. ... The contention that if the husband [father] is not unfit to be the guardian of his minor children, then, the question of their welfare does not at all arise is to state the proposition a bit too broadly and may at times be somewhat misleading.” It was also observed that the father’s fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. The father’s fitness

cannot override considerations of the welfare of the minor children.

57. In our opinion, in such cases, it is not the "negative test" that the father is not "unfit" or disqualified to have custody of his son/daughter that is relevant, but the "positive test" that such custody would be in the welfare of the minor which is material and it is on that basis that the court should exercise the power to grant or refuse custody of a minor in favour of the father, the mother or any other guardian."

11. Furthermore, this Court in Gaurav Nagpal (Supra) undertook a comprehensive and comparative analysis of laws relating to custody in the American, English, and Indian jurisdiction(s) and observed that the Court must construe the term 'welfare' in its widest sense i.e., the consideration by the Court would not only extend to moral and ethical welfare but also include the physical wellbeing of the minor children."

7. The Hon'ble Supreme Court of India, in the matter of **'Rajeswari Chandrasekar Ganesh versus The State of Tamil Nadu & Ors.'**, in Writ Petition (Criminal) No.402 of 2021, decided on July 14, 2022, in paragraphs no.91 and 115 held as under:-

"91. Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as *parens patriae*, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a Habeas Corpus

petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as *parens patriae*, has in promoting the best interests of the child.”

115. We would therefore hold that in the case at bar the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between the rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped to face the problems of life as a mature adult.”

8. This appeal filed on behalf of the grandmother deserves to be dismissed for the reasons; firstly, we have interacted with the girl child in the court itself, she has stated before us that she is living happily with her mother she wants to continue to live further; secondly, the girl child is studying in a private school and mother of the girl child is a government teacher and in the circumstances before us we are of the considered view that the mother is in a better position to look after her daughter; and lastly

in view of the judgment passed by the Hon'ble Supreme Court in the matter of 'Col. Ramneesh Pal Singh and Rajeswari Chandrasekar Ganesh (both supra), this Court is of the considered view that the better interest of the girl child is to live with her mother, thus, the application filed on behalf of the grandmother was rightly dismissed by the court below.

9. Hence, this appeal is dismissed.

10. The demand drafts deposited by the grandmother (appellant herein) in compliance of the order dated 10.09.2024 be handed over/returned back to the counsel for the appellant.

(MUKESH RAJPUROHIT),J

(INDERJEET SINGH),J