

In the High Court of Punjab and Haryana at Chandigarh

.....

F.A.O. No.2891 of 2011 (O&M)

.....

Date of decision:29.7.2011

Nirmal Kaur

....Appellant

v.

Jaswinder Kaur and others

....Respondents

....

**CORAM : HON'BLE MR. JUSTICE MOHINDER PAL**

1. Whether Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. S.K. Sharma, Advocate for the appellant.

Mr. Gurmeet Singh, Advocate for respondent No.1.

Mr. Vinod Kumar, Advocate for respondents No.2 to 4.

.....

**Mohinder Pal, J.**

The appellant has preferred this appeal against the judgment dated 5.3.2011 passed by the learned Civil Judge (Senior Division) (exercising the powers of District Judge under Guardians and Wards Act, 1890) (hereinafter referred to as 'the Act'), Hoshiarpur, whereby the application filed by respondent No.1 under Section 25 of the Guardians and Wards Act, 1890 for custody of the minor children, namely, Harpreet Kaur (daughter) and Jaspal Singh (son) aged about 13

years and 8 years respectively, who were born out of the wedlock between the son of the appellant and respondent No.1, was allowed.

This case is regarding custody of the minor children. The appellant before this Court is paternal grand-mother against the respondent No.1, who is the natural mother.

The petition filed by the mother (respondent No.1 herein) seeking custody of her minor children, namely, Harpreet Kaur and Jaspal Singh from the appellant and her husband, who are grand-parents of the children, was allowed. Against this order the appellant (grand-mother) has filed the present appeal.

As per facts of this case, Jaswinder Kaur widow of Sulinder Singh (respondent No.1 herein) was married to late Sulinder Singh, who died on 12.8.2005 in a bomb explosion while working in Iraq as truck driver. The minor children, namely, Harpreet Kaur-daughter and Jaspal Singh-son were born on 1.9.1998 and 16.7.2003 respectively to her from this wedlock. She has no adverse interest against her children and was competent to look after them and had sufficient means to maintain them. It has been alleged in the application that on the instructions and direction of appellant and her husband, appellant was made nominee of all the bank accounts regarding the claim of her husband. It has been alleged that after becoming nominee, the appellant started harassing respondent No.1 to withdraw money from the Bank and give it to them. As and when she refused to withdraw money, she was given beatings by all in her in-laws. When respondent No.1 refused to withdraw money from the Bank, the appellant along with her husband and along with their sons and daughter

tried to kill respondent No.1 by putting kerosene oil on her, however, she saved herself. When respondent No.1 did not succumb to their pressure, they turned her out of the matrimonial home but they detained her minor children.

While arguing before me, the learned counsel for the appellant has submitted that the grand-parents are competent to take custody of the children and are in a better position for their upbringing. Learned counsel for respondent No.1 has submitted that respondent No.1 is the real mother of the minor children and she has every right to get the custody of the minors. The future and life of the minors is safe in the hand of respondent No.1. The only motive of the appellant and her husband is to get forcibly minors with them so as to grab the money which they had received as compensation on account of the death of Sulinder Singh husband of Jaswinder Kaur (respondent No.1). The respondent No.1 being the natural guardian as mother can provide them best education and other necessities of life as she has sufficient source of income. She has got compensation on the demise of her husband and she is in a position to meet with all the demands and needs of the minor children.

I have given my thoughtful consideration to the submissions of both the sides. There can be no two views about the fact that the mother can be the best guardian to look after the welfare of her children. This is a case in which the grand-mother has claimed the custody of her grand-minor children being guardian from their mother. On the other hand the appellant has opposed the claim by respondent No.1-mother that both the minor children are living in the safe custody of the appellant and her husband,

who are their grand-parents.

In the case of custody of minor, the welfare of the child is of paramount consideration. Keeping in view the age of the children, mother will be the best person to up-bring and keep the children in a better atmosphere. Otherwise, also it has come on record that the mother has sufficient means to up-bring the children as she had received compensation on account of death of her husband. Depriving her the custody of the children at this stage is likely to affect her mentally.

It has been brought to my notice that the case is fixed before the trial Court for 8.8.2011. The parties are directed to appear in that Court along with the children. The custody of the children will be handed over to the mother on that day. The trial Court will ensure that the custody of the children is smoothly handed over to the mother.

The appeal is accordingly dismissed.

July 29, 2011.

**(Mohinder Pal)**  
**Judge**

\*hsp\*

F.A.O. No.2891 of 2011 (O&M)

[5]