

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**WRIT PETITION NO. 2088 OF 2022**

**JAMILA BEGUM REHIM, ETC.**

**Vs.**

**PUBLIC AT LARGE, ETC.**

**Petitioner by : Mr. Afzaal Qadeer Satti, Advocate.**

**Respondent by : Rana M. Yousaf Siddique, Advocate.**  
(Respondents No. 2 & 3)

**Date of hearing : 08.09.2022.**

**SAMAN RAFAT IMTIAZ, J.:-** Through the instant writ petition, the Petitioner has assailed the dismissal of the her petition for the custody of the minors / Petitioners No. 2 to 4 and Respondent No.5 vide the Judgment and Decree dated 20.02.2020 (“**Impugned Judgment and Decree**”) passed by the learned Civil Judge-III/Guardian Judge, West-Islamabad (“**Trial Court**”) and the appeal against the same vide the Judgment dated 20.04.2022 (“**Impugned Judgment**”) passed by the learned Additional District Judge-IX, West-Islamabad (“**Appellate Court**”) . Whereas, Respondent No.2’s petition for custody of the minors was allowed vide Impugned Judgment and Decree.

2. The brief facts, as per the Memo of Petition, are that the Respondent No.2 was married to the son of the Petitioner No.1 namely (late) Abdul Waheed Raheemi (“**Deceased Son/Husband**”) and Petitioners No. 2 to 4 as well as the Respondent No. 3 are the children of Respondents No. 2 and the Deceased Son. The Deceased Son/Husband has expired. The Petitioners No. 2 to 4 were brought up by and are presently residing with the Petitioner No.1 who is their real grandmother whereas, the Respondent No.3 is residing with Respondent No.2. The Petitioner No.1 applied for appointment as guardian of the minor children vide guardian petition No. 61/2019 before the learned Senior Civil Judge/Guardian Judge-III, Islamabad-West/Respondent No.5 and the Respondent No.2 also

subsequently filed guardian petition No. 117/2019 seeking custody of the minor children. The aforesaid petitions were consolidated and consolidated issues were framed whereafter parties led their respective evidence. The learned Trial Court / Respondent No.5 passed the Impugned Judgment and Decree dated 20.02.2020, whereby petition of the Respondent No.2 was allowed while awarding right of visitation to the Petitioner No.1. Being aggrieved of the said Impugned Judgment and Decree, Petitioner No.1 preferred appeal before the learned Additional District Judge-IX/Respondent No. 4, who dismissed the appeal vide Impugned Judgment dated 20.04.2022.

3. The learned counsel for the Petitioners submitted that both the lower courts failed to take into account the fact that the Respondent No.2 was a disobedient wife who preferred to live separately from the Deceased Husband even in his life time. Nor did she ever look after the minor children. He argued that both the learned Courts below have failed to take into consideration the welfare of the minors and guardianship has been given to the Respondent No.2 only on the basis of being natural guardian. The learned counsel further argued that the Courts below seriously erred in not taking into consideration the statement of the Petitioners No.2 to 4 who categorically stated that they do not wish to live with their mother/ Respondent No.2. The learned counsel pointed out that the Courts below have misread the evidence as Respondent No.2 admitted that she is unaware of the minors' educational affairs on cross examination and that RW-2 who is the brother of Respondent No.2 also admitted on cross examination that the Respondent No.2 works in a government office from 9 to 5 during which time the Respondent No.3 is taken care of by his wife and the mother and sister of the Respondent No.2, whereas, on the other hand the Petitioner No.1 personally looks after the Petitioners No. 2 to 4 who reside with her and as their real grandmother she is better suited to take care of the minors.

4. On the other hand, the learned counsel for the Respondents No. 2 and 3 pointed out that the Petitioner No.1 on cross examination admitted that she is not literate; that the guardian petition was neither read out to her nor did she read it herself; that she affixed her thumb impression thereto without knowledge as to its contents; that she herself is dependent upon her children for her various needs; and that whenever she is unwell she is taken to the hospital by her children. He argued that both the lower courts have taken into consideration all relevant aspects of the case and come to the conclusion that the Petitioner No.1 is not capable of looking after the children due to her old age while on the other hand it has not been shown as to why Respondent No.2 is not fit for guardianship given that she is the natural guardian of the children. Lastly he submitted that the Respondent No.2 is a financially independent and well educated woman who is more suitable for the guardianship of the minors in every aspect.

5. I have heard the learned counsel for the parties and have also perused the relevant record as well as Impugned Judgments with their able assistance.

6. It must be borne in mind that this Court in exercise of Constitutional jurisdiction does not act like a Court of appeal. It neither reappraises evidence nor does it substitute the concurrent findings of fact recorded by the Family Court with its own findings solely on the ground that another view was possible on the same evidence. A party approaching the High Court under Article 199 of the Constitution has to demonstrate that there is a gross misreading or non-reading of evidence or jurisdictional error or such legal infirmity that has caused miscarriage of justice.

7. Perusal of the Impugned Judgments and Decree shows that contrary to the assertions of the learned counsel for the Petitioners both the learned Courts below have duly considered the statements recorded by the minors / Petitioners No. 2 to 4 that they do not wish to live with their mother despite which they have, for reasons

recorded in such Impugned Judgments and Decree, appointed the Respondent No. 2 the guardian of the minors. Just because the findings are against the Petitioner No. 1 does not mean that the statements were ignored. Perusal of the transcript of the cross examination of the Respondent No. 2 also shows that contrary to the argument made on behalf of the Petitioners, the Respondent No. 2 in fact denied that she has never been to the minors' school and in fact voluntarily stated that she had gone to their school but she was not allowed to meet them.

8 In such circumstances when no misreading or non-reading of evidence has been pointed out by the Petitioners or other legal infirmity, the Impugned Judgments and Decree do not warrant interference by this Court in the exercise of Constitutional jurisdiction.

9. For what has been discussed above, instant petition, being devoid of any merit, is hereby dismissed.

**(SAMAN RAFAT IMTIAZ)**  
**JUDGE**