

Prabhu Dayal vs Asharfi Kuari And Anr. on 23 April, 1952

Equivalent citations: AIR1952ALL858, AIR 1952 ALLAHABAD 858

JUDGMENT

Sapru, J.

1. This is an appeal against the order of the learned District Judge of Farrukhabad dated 24-2-1950 by which he dismissed the application of the appellant for the custody of his minor son, Mahendra Mohan. The minor was 8 years old at the time of the application. His father, Shri Prabhu Dayal, and his mother, Sm. Asharfi Kuer, have fallen out and have been separated now for over 10 years. The responsibility for the events which led to this separation rests exclusively with Prabhu Dayal. The allegation of the wife, Sm. Asharifi Kuer, was that her husband used to beat her mercilessly, that she had indeed to leave her home and seek the protection of the police on one occasion.

This allegation was believed by the District Judge. The mother's case against the father is that he is a very cruel and eccentric person. She is his third wife. According to her, he illtreated his son by his first wife and his daughter by the second wife so much so that his son by the first wife is being brought up and educated by the father of Sm. Asharfi Kuer. So far as the daughter by the second wife is concerned, she was the victim of an unfortunate kidnapping affair which was due to want of care on the part of the appellant.

2. The mother lives with her father and the learned Judge has not believed the appellant's allegation that his father-in-law is given to drinking and prostitution. The maternal grandfather has been nice to the minor. He looks after his mother and is genuinely interested in the welfare of his grandson. It is no doubt true that according to Hindu Law the father has a right to be preferred to the mother in the matter of the guardianship of his minor children, whether male or female. But this rule has well recognised limitations. For whatever be the position under the Hindu Law, the first duty of the Court in appointing a guardian is to have proper regard for the welfare of the minor or the infant, as he is called in English law. There should be no inflexible application of paternal rights over minor children (vide Mayne's Hindu Law, 11th Edn., para. 234, p. 291).

The interest of the minor comes first and the question for consideration is whether, in all the circumstances of the case, it will be wise to hand over the child to a father who is leading a bachelor existence, who has, as far as I can see, no woman member of the family to look after the minor child and who has shown himself to be a person who could not take proper care of his two elder children. It is contended by Mr. Avasthi that the child's education is being neglected by the maternal grandfather. His contention is that the father who lives in an urban area will be better able to look after the child's education than the mother who is living in a village with her father. I am not prepared to accept this argument as correct. The father seems to have taken hardly any interest in the education of his elder boy, Jatendra Mohan. He allowed him to go his own way until his

father-in-law, Mathura Prasad, gave him an asylum in his house. The father was unquestionably unable to look after his daughter.

I cannot understand how, when he has failed to look after his two elder children, he will be able to give a satisfactory account of himself as a father so far as this particular child is concerned. The position, as I see it, is that the maternal grand, father has been hesitating to send the boy to school as he is afraid that the appellant might take him away any moment while going to or coming back from school. It is only, therefore, reasonable to assume that his fears will be allayed by the appointment of the mother as guardian, Certainly the child's education needs to be looked after; but there is no reason to apprehend that the mother, assisted and advised as she will be in this matter by her father, will not be able to do so.

3. Apparently the child has some property and I see no reason to think that the mother with the help of her father will not be able to manage that property properly. Having given the matter that anxious consideration which a Court must give to a case in which the interests of a minor are involved, I have come to the unhesitating conclusion that the order of the learned District Judge dismissing the application of the father for being allowed the custody of the child in this case is a right one. I am not, therefore, prepared to disturb it.

4. The result is that the appeal is dismissed with costs.