Supreme Court of India
Jai Prakash Khadria vs Shyam Sunder Agarwalla & Anr on 12 May, 2000
Author: Y.K.Sabharwal
Bench: S.B.Majumdar, Y.K.Sabharwal

PETITIONER:
JAI PRAKASH KHADRIA

Vs.

RESPONDENT:
SHYAM SUNDER AGARWALLA & ANR.

DATE OF JUDGMENT: 12/05/2000

BENCH:
S.B.Majumdar, Y.K.Sabharwal

JUDGMENT:

Y.K.SABHARWAL J.

Leave granted in SLP(C) No.5357/2000.

Two grand fathers - maternal and paternal - are fighting bitter litigation to secure the custody of their grandson, Ankur. It is second time that they are before this Court. Our efforts for amicable settlement between them have not succeeded. We, however, hope that in the interest of their grandchild at last they will resolve the controversy in near and not distant future and bring to end the litigation which commenced after respondent no.1 lost his son and the appellant his son-in-law.

In May 1990, marriage was solemnised between Meera and Sanjay and out of wedlock, Ankur was born in December, 1991. On attaining three years of age, he was admitted into Maria Montessory School, Guwahati in the year 1995. Unfortunately, all of a sudden, Sanjay died in a heart attack in the year 1995. Ankur's paternal grandfather - respondent no.1, on 27.2.97 filed a case under Section 7 of Guardians and Wards Act, 1890, for appointing him as guardian and custodian of Ankur and an ex-parte order of injunction was also sought restraining Meera from giving Ankur in adoption to her parents or any other person. The Principal Judge, family court, directed the maintenance of status-quo with respect to Ankur. In opposition, the stand taken by the appellant - maternal grandfather and his daughter - was that Ankur had been adopted by appellant on 9.2.97 and subsequently on 27.2.97, a deed of adoption was executed and the said deed was registered at Golaghat sub-Registry as the adoption took place at Dergaon. The deed of adoption, it seems, was registered on 28th February, 1997. The family court rejected the prayer of respondent no.1 for interim custody of the child but respondent no.1 succeeded in the revision petition filed in the High Court against the order of the family court. The High Court directed on 19.2.98 that interim custody of Ankur be given to respondent no.1 till disposal of application for appointment of guardian. That

order was, however, varied by this Court in the Special Leave petition filed by the appellant on agreement of the parties in terms of order of this Court dated 15th September, 1998. The said order directed access of Ankur being given to respondent no.1 and his wife on certain days and the arrangement in the said order was directed to continue till the disposal of the case pending before Family Court.

The Family Court by order dated 7th December, 1998 appointed respondent no.1 as guardian of minor Master Ankur and the appellant was directed to hand over the child to respondent no.1 as soon as his examination is over. The challenge of the appellant and his daughter of the order passed by the Family Court did not succeed before the High Court. Their appeal was dismissed and the order of the Family Court was maintained. These are the circumstances under which the matter is once again before this court on this appeal having been preferred by the maternal grandfather.

The Family Court and the Division Bench of the High Court have extensively examined the matter and given due weight to the relevant factors for considering the aspect of the welfare of the minor which is of paramount importance in the custody matters. It has also been noticed in these orders that in May 1997, Meera remarried and her husband from first marriage has two children - one now aged about 14 years and other 9 years. She is settled with her husband in Calcutta. The dispute regarding the validity of the adoption is subject matter of Title Suit No.4 of 1997 pending between the parties. The observations made in the judgments of the High Court and of the Family Court in respect of the adoption and deed of adoption are prima facie for deciding the question of custody. We find no fault in this approach. Undoubtedly the substantive rights in regard to adoption would be decided in the title suit on its own merits.

It seems evident that none of the parties has any oblique motive. All of them have utmost love and affection for Ankur and we suppose that with that object in view, the custody is being sought by maternal grandfather on the one hand and paternal grandfather on the other. Another reason may be to have a male member in the family as both grandparents have only daughters, the only male member being father of Ankur having died.

Ankur had been studying at Maria Montessory School, Guwahati from 1995 till he shifted to Dergaon along with the appellant in April 1999. Dergaon is about 200 kilometers away from Guwahati. He has been admitted in a school which is 25 kilometers from Dergaon though he daily travels about 50 kilometers both ways in the personal car of the appellant. Both the parties seem to be quite affluent though by that itself cannot be the only criteria. We are informed that the Maria Montessory School is only about one kilometer from the place where paternal grandparents reside. None says that it is not a good school. Serious doubts that have been expressed about the validity of the adoption were sought to be explained by learned counsel for the appellant. We, however, refrain from commenting upon the validity of adoption in view of the pendency of the suit challenging it. The reasons given by the Family Court and High Court for directing custody of Ankur being given to the respondent no.1 cannot be faulted. In the custody proceedings, the case of the daughter of the appellant also was that as she has given Ankur in adoption of her father, he alone is the lawful guardian and thus her father-in-law does not deserve to be appointed a guardian and given custody of Ankur. We may also note that initially, she did not challenge the order of the High Court but

during the pendency of the Special Leave Petition filed by her father, she has filed Special Leave Petition. In view of her stand about adoption, we cannot entertain her Special Leave Petition, also now contending that she may be appointed as the guardian of Ankur. This was not the claim before the Family Court or the High Court.

The orders relating to custody of children are by the very nature not final but are interlocutory in nature and subject to modification at any future time upon proof of change of circumstances requiring change of custody but such change in custody must be proved to be in the paramount interest of the child (Rosy Jacob v. Jacob A. Chakramakkal [(1973) 1 SCC 840]).

Having heard Mr. Gopal Subramaniam, Dr. Singhvi and Dr. Rajeev Dhavan, and on examination of the record, we do not think that the impugned order deserves to be interfered with.

The High Court in the impugned judgment has agreed with the reasoning and final conclusion to which the learned Principle Judge, Family Court reached in favour of respondent no.1. It has to be kept in view that respondent no.1 is the paternal grandfather of child Ankur. He appears to have lot of attachment to him. In fact, it was the case of the maternal grandfather himself that during the time minor Ankur was with respondent no.1, he and his wife were over- fondling him. This shows their attachment to him. It has also to be noted that the evidence laid before the Principal Judge, Family Court shows that earlier respondent no.1 had executed wills bequeathing his movable and immovable properties in favour of his daughters but he has cancelled the said Wills and by two Wills (Ex. 4 and 5) executed by his wife and himself respectively, they bequeathed their entire property in favour of minor Ankur on condition that he comes and live with them. It has also been noted by the Principal Judge, Family Court that during the time minor Ankur was in the custody of the appellant pursuant to the interim order in these proceedings, he spent most of his time with servants in the house of the appellant at Guwahati as he lived mostly in Dergaon which is about 200 kms. from Guwahati. As all the daughters of appellant were living outside, there was no other person except the servants of appellant in his house to look after minor Ankur. All these circumstances well established on record clearly show that there is no infirmity in the decision rendered by the Family Court as confirmed by the High Court directing custody of minor Ankur to be handed over to respondent no.1, his paternal grandfather.

However, we feel that the impugned custody orders require to be worked out for three years so that there is no interruption of Ankur's study every now and then. If after the expiry of the said period, circumstances warrant in the interests of Ankur, the matter of custody can be reagitated before an appropriate forum. However, appropriate orders in respect of visitation rights deserve to be passed so that the maternal grandparents and the mother have access to Ankur. We, therefore, direct as under :-

1. The custody of Ankur would be handed over to respondent no.1 forthwith so that there is no further disruption in his studies and he can be admitted in the school at Guwahati without any delay.

2. During half period of summer, winter and other long vacation, the temporary custody of Ankur would be given to the appellant. It would be for the appellant and his daughter to decide where Ankur should spend the said vacation period. The appellant, his wife and the mother can meet Ankur as and when they like in the house of respondent no.1 so long as it does not hinder his studies.

3. The appellant would also have the right to take Ankur to Dergaon on any one week-end in a month by taking him on Friday evening or Saturday morning but ensuring that he reaches back Guwahati by Sunday evening. This is subject to the condition that school is for five days. Otherwise he can be taken after school on Saturday and returned on Sunday evening.

SLP(C) No...../2000 [CC 2745 of 2000] is dismissed and the appeal arising out of SLP (C) No.5357 of 2000 is disposed of in the above terms.

.....J. (S.B. Majmudar) .....J. (Y.K. Sabharwal) New Delhi May 12, 2000 Before parting with this matter we put it to the learned counsel for appellant no.1-Jay Prakash Khadria and to learned counsel for respondent no.1-Shyam Sunder Agarwalla to be good enough to deposit in fixed deposits in a nationalised bank at Guwahati a net amount of Rs.10,00,000/- (Rupees Ten Lac only) each in the name of minor Ankur. Rs.10,00,000/- be deposited in the name of minor Ankur represented by Jay Prakash Khadria. Another amount of Rs.10,00,000/- be deposited in the name of minor Ankur represented by Shyam Sunder Agarwalla, each being shown as guardian of minor for the limited purposes of taking out these fixed deposit receipts. Learned counsel for the said parties have agreed to this suggestion. WE direct accordingly. The said amounts, on being deposited as aforesaid, shall remain deposited and the Fixed Deposit Receipts may be got renewed from time to time till minor Ankur attains majority. Neither the principal amounts nor the interest accrued thereon shall be permitted to be withdrawn by the respective persons who have deposited the same in the name of minor Ankur till he attains majority. The aforesaid deposits shall be made within eight weeks from today.