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2. Respondent in present appeal i.e. petitioner before learned Family Court filed petition under Section 6 of Hindu Minority and Guardianship Act, 1956 read with Section 25 of Guardian and Ward Act, 1890 seeking custody of her minor child aged eight years. She pleaded that a son was born to her and her husband on 18.12.2015. Her husband and brother of appellant No. 1 unfortunately passed away on 17.11.2022. Appellant No. 1 proposed that in case respondent had no objection, better education could be provided to the minor child at Rohtak where she was residing alongwith her husband and two sons. It was asserted by appellant No. 1 that her other sister was working as Science Teacher at Government School, therefore, she could also help in the matter. Mother of minor, it is stated, agreed for education to be provided by paternal Aunt. Child was admitted at private School at Rohtak from April 2023 till end of the session. When the mother came to take her child after completion of annual examination, she was not allowed to even meet the minor. When present appellants refused to hand over custody of minor child, petition in question was filed. Same was opposed by present appellants while stating in their reply/written statement that mother had herself abandoned the minor child and remarried one Joginder son of Phool Kumar, in the month of May, 2023. It was further pleaded that mother had no love and affection for the minor child and it is not conducive for welfare of the child that he should live with his mother. Appellants claimed to be in a better position to provide good education, amenities and guidance to the minor. Respondent – mother filed applications seeking interim custody of minor child alongwith an application for applying under Orphan Child Pension scheme of Chief Minister and Child Ashirwad Scheme, Haryana.

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3. Learned Family Court while observing that mother being natural guardian and in the given facts and circumstances of case, was the best person to take care of her son and in the interest of welfare of minor child, directed vide impugned order that minor be produced in Court for handing over interim custody during pendency of petition. It was further observed by learned Family Court in impugned order dated 09.12.2024, that during interaction with the child, it was found that he had been tutored in a manner which is not in his welfare nor healthy for his growth as a human being with moral and ethical values. It was further observed that minor had earlier been in the custody of his mother, since his birth till April, 2023. Aggrieved of order dated 09.12.2024, present appeal has been filed.

4. Learned counsel for appellants vehemently argues that child was left by respondent – mother herself, after the death of her husband i.e. brother and bother-in-law respectively of present appellants. She re-married in the month of May, 2023 with one Joginder son of Phool Kumar and is not in a position to look after her child and it is not in the interest of minor child to be with the mother. Moreover, learned trial Court has not taken in account the wishes of minor child, who is nine years old and is very well aware of the surroundings.

5. Learned counsel for appellants submits that petition under Section 6 of Hindu Minority and Guardianship Act, 1956 read with Section 25 of Guardian and Ward Act, 1890 was filed by the mother on 06.05.2024, only after some land was transferred in his favour by present appellants on 24.04.2024. It is this transfer of land in the child's favour which has actuated filing of petition seeking his custody. It is, thus, prayed that this appeal be allowed.

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6. We have heard learned counsel for appellants and have gone through the file with his able assistance. However, we do not find any ground to cause interference in the matter, at this stage.

7. Learned counsel for appellants is unable to deny that child had been looked after by the mother since his birth on 18.12.2015 and had been in her custody since his birth till April 2023. Perusal of reply/written statement filed on behalf of presents appellants before learned Family Court reveals that there is not a whisper therein regarding the child not being looked after properly by the mother in all these years. Neither is there mention of transfer of any land in favour of minor child. Learned counsel for appellants is unable to deny the same. There is no document on record before learned Family Court or even attached with the present appeal indicating such transfer of land. Mother of minor child is admittedly his natural guardian and child had been in custody of mother since his birth till April 2023 without any aspersions about him not being taken care properly. Argument that the child does not wish to be with the mother is of no avail to appellants in the wake of specific observation of learned Family Court that the child has been tutored against the mother.

8. Learned counsel for appellants vehemently argued that the mother submitted an application for discontinuation of widow pension after her re-marriage, therefore, observation of learned Family Court that there is no prima facie proof of re-marriage of mother is available, is incorrect. Yet again, we do not find any merit in this argument for the reason that there is no such document available on record to indicate that mother has sought discontinuation of widow pension. Similarly, as noted in foregoing para, there is no document whatsoever available on record to indicate that land, as is averred, has been transferred in favour of minor child by present appellants.

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Learned counsel for appellants while conceding that there is no such pleading in the written statement filed on their behalf, however, submits that relevant documents have been obtained recently, thus, could not be placed before learned Family Court.

9. In the given facts and circumstances of the matter, we do not find any ground to cause interference in impugned order dated 09.12.2024 at this stage. However, liberty is afforded to appellants, if so advised, to file appropriate application before learned Family Court to bring to its notice the factum of transfer of land, if any, by appellants in favour of minor child. Learned Family Court would consider the same and if required, take appropriate steps. Observations in this order are confined to the purpose of disposal of this appeal only and shall have no bearing on adjudication of the petition by the learned Family Court.

10. Appeal is disposed of accordingly.

(LISA GILL)
JUDGE

(ALOK JAIN)
JUDGE

January 08, 2025

Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No