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IN THE COURT OF FARMAN ULLAH

SENIOR CIVIL JUDGE/JUDGE FAMILY COURT ORAKZAI AT BABER MELA, HANGU

Family Case No. 4/3 of 2021
Date of Institution: 10/06/2021
Date of Decision: 11/10//2021

1. **Zar Gul s/o Mewa Gul**

R/o Qoam Rabia Khel, Jeerab, P/O Samana, Tehsil Ismail Zai & District Orakzai
..... (Plaintiffs)

VERSUS

1. **Mst Basra Bibi D/o Muhammad Sharif**

2. **Muhammad Sharif S/o Muhammad Shah**

R/o Qoam Rabia Khel, Jeerab, P/O Samana, Tehsil Ismail Zai & District Orakzai
.....(Defendants)

PETITION FOR CUSTODY OF MINORS

JUDGEMENT:

Brief facts of case in hand are that the petitioner filed instant petition for custody of minors namely Mudasir and Muhammad Aryan by contending that he is the real grandfather of minors while the father of minors is abroad in connection with his livelihood. That son of the petitioner namely Muhammadan Gul and respondent No.1 got married 15 (fifteen) years ago and Allah blessed them with 02 (two) children namely Mudasir and Muhammad Aryan. That the marriage between the respondent No.1 and son of petitioner dissolved through *Talaq* and presently minors are residing with respondents. That respondents are living in remote area, where no basic facilities of life and education are available, hence they are unable to provide proper education and other facilities to the minors. That petitioner is in position to provide quality education and other facilities to the minors.


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That respondents were repeatedly asked to handed over the minors to the petitioner but they refused. Hence, the instant petition.

1. Respondents were summoned, who appeared before the court and contested the petition by submitting their written reply, wherein, they objected the claim of petitioner on various grounds.
2. The divergent pleadings of the parties were reduced into the following issues.

ISSUES:

1. Whether the petitioner has got a cause of action?
2. With whom custody, the welfare of minors lies?
3. Relief.

After framing of issues both the parties were provided opportunity to produce evidence in support of their respective contention.

Petitioner recorded his sole statement as PW-01 and relied on the same while respondents recorded the statement of respondent No. 1 as DW-01 and of Muhammad Shareef as DW-02.

Learned counsel for the parties heard and record gone through. In the light of available record and arguments of counsel for parties, my issue wise discussion is as under:

Issues No. 02:

It is averred in the petition that petitioner is the real grandfather of minors and the father of minors is abroad while respondent No.1 is the real mother of minors and the marriage of respondent No.1 with the son of petitioner has dissolved. That minors are residing with respondents in a far-flung area, where, basic facilities of life are missing while petitioner is residing in vicinity, where,

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all the facilities of life are available and he desires to provide all the such facilities to the minors for their wellbeing.

On other hand respondents contended in their written reply that respondent No. 1 is the real mother while respondent No. 2 is the maternal grandfather of minors and respondent No.1 being the real mother of minors is in better position to take care of the minors and can do all the acts for the wellbeing of minors.

Petitioner in support of his contention appeared as PW-01 and repeated the contents of petition in his examination in chief. During cross examination admitted that respondent No.1 has not contracted 2nd marriage while father of minors has contracted 2nd marriage. He also admitted that the father of minors has not provided maintenance to the minors. He also admitted that decree has been passed by the court regarding the maintenance of minors.

On other hand respondent No.1 appeared as DW-01 and stated in her examination in chief that minors are residing with her after her divorce and she has not contracted 2nd marriage. Similarly, she has no intention to contract 2nd marriage as her priority is the wellbeing of the minors. DW-01 also stated that she has admitted minor namely Mudasir in the school as well as in the madrassa. During cross examination stated that she is residing with her parents at village *Jeerab*. She denied that the distance between the village *Jeerab* and *Samana* is covered in two hours. DW-01 stated that school and madrassa are situated adjacent to each other. She also stated that she has not produced any written document in respect of admission of minor in the school while Muhammad Sharif appearing as DW-02, stated in his examination in chief that minors are residing with her mother and she has admitted her elder son in the school as well as in madrassa. He also stated that respondent No.1 is taking due care of minors. During

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cross examination stated that he does not know the names of minors. however, minors as well as their parents are his relatives.

From the available record it is an admitted position that respondent No.1 is the real mother of the minors while petitioner is the paternal grandfather of the minors and father of minors is alive. It is also an established fact that the marriage of respondent No. 1 with the son of petitioner has already been dissolved and minors at present are residing with respondents, who are bearing all the expenses of minors. From the statement of PW-01 it is also clear that father of minors has contracted 2nd marriage while respondent No.1 has not contracted 2nd marriage so far. The statements of DW-01 and DW-02 manifest that minor namely Mudasir has been admitted by the respondent No.1 in the school as well as in madrassa while the other minor namely Muhammad Aryan is of tender age, in spite of the fact that no maintenance have been provided by the father of minors after dissolution of marriage between respondent No.1 and father of minors, which suggest that respondent No.1 being mother of minors is taking due care and do all the acts necessary for the welfare of minors. Moreover, record shows that both the minors are of tender age as the age of minor No.1 is approximately 05 years while of other is about 3/4 years. Being such position, the minors are in dire need of love and affection of their mother. Respondent No.1 being the real mother of minors can provides such love and affection to the minors and her love and affection cannot be substituted by the love and affection of grandfather (petitioner) and step mother. In other words, in such like circumstances the right of custody of minors cannot be substituted or equated with any other right. Similarly, nothing was brought on record by the petitioner which could show that the custody of minors with their mother (respondent No.1) has adversely affected

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the welfare of minors or there is likelihood of so in future. So the available record and the circumstances suggest that the welfare of minors is in their custody with mother (respondent No.1) and not with petitioner. Hence, issue No.2 is decided in favour of respondents and against the petitioner.

Issue No. 01:

For what has been held in issue No. 02, this court is of the opinion that petitioner has got neither cause of action nor he is entitled to the custody of minors.

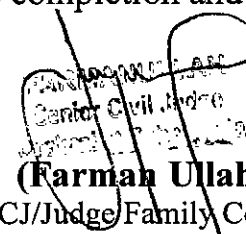
Thus, the issue is decided in negative.

Relief:

As sequel to above discussion, it is held that petitioner has failed to prove his stance regarding the custody of minors through cogent and confidence inspiring evidence. Hence, petition of petitioner is dismissed. No order as to cost.

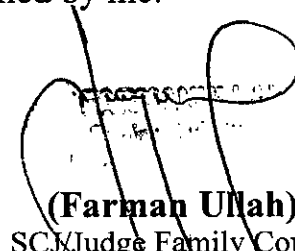
File be consigned to the record room after its completion and compilation.

Announced
11/10/2021


Center Civil Judge
(Farman Ullah)
SCJ/Judge Family Court,
Orakzai at Baber Mela, Hangu.

CERTIFICATE

Certified that this judgment of mine consisting of 05 (five) pages, each has been checked, corrected where necessary and signed by me.


(Farman Ullah)
SCJ/Judge Family Court,
Orakzai at Baber Mela, Hangu.