

Poonam Datta

Vs

Krishanlal Datta and Others

Criminal Appeal No. 555 of 1988

(Ranganath Misra, M. M. Dutt JJ)

11.10.1988

ORDER

1. Special leave granted.
2. The appellant applied to the High Court of Punjab and Haryana at Chandigarh for a writ of habeas corpus alleging that her minor son Vaibhav Datta was being detained by respondents 1 to 3. The High Court summarily dismissed the petition adding : "Krishanlal Datta respondent 1 shall be entitled to receive the interest accruing on the fixed deposit receipts in the name of the minor child Vaibhav Datta as long as the minor child is in his legal custody."
3. Notice was issued on the special leave petition and respondents appeared before this Court. Several orders were made by this Court with a view to bringing about a settlement between the parties. That has, however, not worked out successfully and the matter has now to be finally disposed of on merit.
4. Respondent 2, Mrs. Mohini Datta is the wife of Shri Krishanlal Datta, respondent 1. The respondent couple had a son - Amar Jyoti Datta who was married to the appellant in February 1985 died in February 1986. Respondent 3 is the daughter of respondents 1 and 2. Vaibhav is the son born to Mr. Amar Jyoti Datta and Poonam the appellant. Amar Jyoti was in service and upon his death certain monies were payable from the employer.
5. Respondent 1 was in Defence Service and after retirement settled down at Karnal in Haryana State, where he has own house. Respondent 3 is not yet married and stays with her parents. The appellant's allegation that she has been thrown out of the family house about six months after the death of her husband when disputes arose between the two parties over the entitlement to the money payable upon Amar Jyoti's death has been denied. It is not necessary to refer to the other facts pleaded by the parties.
6. Under orders of the court respondents shifted over to Modi Nagar and are prepared to stay on at Modi Nagar. Vaibhav has been put into a local school at Modi Nagar where the appellant is a teacher. We direct that Vaibhav shall continue to study in the said school and neither party would be permitted to withdraw him without permission of the court. Vaibhav shall live with his mother but during every weekend (that is Saturday and Sunday) respondent 1 shall be of the respondents at his residence for the whole of Saturday and till 6 p. m. on Sunday following and return the child to the mother by 6 p. m. on Sunday so that the mother takes over the custody of the child and makes him ready for going to school next morning. Parties have agreed that this arrangement shall continue until either of them goes for an appropriate guardianship proceeding and gets a declaration. The

money is already in deposit under orders of the High Court and respondent 1 has been receiving the interest. We direct that the amount shall remain in deposit as at present and the interest shall be payable to the appellant and respondent 1 in equal share but in case a proceeding is taken for guardianship, it shall be competent for that court to vary the order of the High Court in any manner it considers appropriate.

7. Parties are directed to consider the interest of the child as paramount and do nothing which would be adverse to its interest or affect it physically or mentally in any manner. All the parties were before us when the matter was finally heard on October 5, 1988 and had cautioned them that in case of any sustained allegation against the interest of the child, the matter would be seriously dealt with. The appeal is disposed of with these directions without costs.

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