

In the Supreme Court of Bangladesh
High Court Division
 (Civil Revisional Jurisdiction)

Present:
Mr. Justice Mamnoon Rahman
And
Mr. Justice Ashish Ranjan Das
Civil Revision No. 1514 of 2017

In the matter of:

Md. Fazlul Haque Mithu
 Appellant.

-Versus-

Monira Begum Mile Advocate
 opposite party.
 Mr. Md. Shajan Omar, Advocate with
 Mr. Md. Ramjan Khan, Advocate.
for the Appellant.
 Ms. Mahbuba Huq, Advocate
 for the opposite party.

Heard on 10.10.2018, 13.02.2019 and
judgment on: 27.02.2019.

Ashish Ranjan Das, J.:

Learned Additional Assistant Judge, 5th Court, Dhaka in Family Suit No.1228 of 2009 decreed the plaintiff's suit for custody of person of her minor daughter. Her husband defendant preferred Family Appeal No. 128 of 2011 and the learned Additional District Judge, 6th Court, Dhaka dismissed the appeal and upheld the order of learned Assistant Judge.

Being further aggrieved the defendant husband brought this civil revision under 115 (1) of the Code of Civil Procedure.

We have heard the learned advocate for both the respective parties and perused the record.

Short fact is that the plaintiff respondent Monira Begum Mile is an advocate by profession. She was married to the petitioner according to the Muslim Sharia on 03.09.2004. On 28.08.2006 she gave birth to a female child named Ashley Emilia Prithibi. However her conjugal life turned bitter. On 02.10.2006 she was driven away from her husband's refuge and since then she has been living in her parental house with a little daughter.

The petitioner's husband gave no maintenance although he divorced the plaintiff on 08.08.2007. However pursuant to further development she brought the suit for hjanat of the little daughter while the case of the petitioner husband is that the plaintiff wife used to be a woman of questionable character. Earlier she was married and she suppressed the fact. Besides she does not have the ability to bring up the daughter. She creates hindrance so that he can not meet the little daughter.

In trial the plaintiff alone gave evidence while although filled written statement but the defence adduced no evidence. The learned Assistant Judge observed that the plaintiff was quite capable of rearing her child since she was a lawyer. While the facts of in capacity of the wife raised by the husband petitioner was not proved in evidence. Rather the defence adduced no evidence.

Besides the girl was by the time more than 10 years old and the issue of the meeting the daughter was not issue.

Accordingly the trial court decreed the suit for custody of person of the little daughter and the lower appellate court also affirmed the judgment and decree with the same finding.

It has not been denied that the plaintiffs respondent was an advocate and hence the question of incapacity of the mother to bring up the daughter for want money apparently does not arise. While all other objections raised by the husband defendant was not proved in evidence. Finally the little girl by the time is most adult. So the issue of hizanat is expected to loose its significance in a near future.

Thus we find that the learned lower appellate court committed no illegality in upholding the decree of the trial court.

Accordingly the rule is discharged.

No order as to costs.

Send down the Lower Court records at once.

Communicate the Judgment and Order to the concern Court at once.

Mamnoon Rahman,J

I agree