

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
C.P.No.S-943 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on MA-2558/2019
2. For hearing of MA-2559/2019
3. For hearing of MA-358/2020
4. For hearing of main case.

19.10.2020.

Mr. Meer Ahmed Mangrio, advocate for petitioners.
Mr. Habib Ali Laghari, advocate for respondent No.1
Mr. Muhammad Ismail Bhutto, Additional Advocate General.
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Irshad Ali Shah, J; The facts in brief necessary for disposal of instant constitutional petition are that the private respondent was married with Mst. Zahidan. Together, they were blessed with two kids named Baby Amara and Master Zainul Abdin. Subsequently, Mst. Zaidan died and custody of the above said kids was retained by the petitioners being their maternal grandfather and maternal uncle. The private respondent by way of making an application u/s 25 of the Guardian and Wards Act, 1890 sought for custody of his kids. It after due trial was allowed by learned Ist Family / Civil Judge, Dadu vide order dated 12.10.2019. It was impugned by the petitioner by preferring an appeal. It was dismissed by learned District Judge, Dadu vide judgment dated 10.12.2019, which is impugned by the petitioner before this Court by way of filing the instant constitutional petition.

2. It is contended by learned counsel for the petitioner that the private respondent as per his own father is a jobless person and is having no house of his own, he as such could not maintain the kids properly therefore, their welfare would be with the petitioners. By

contending so, he sought for setting aside of impugned judgment being illegal. In support of his contention he relied upon cases of ***Mst. Firdous Iqbal vs Shifaat Ali and others (2000 SCMR 838)***, ***Zahoor Ahmad vs Mst. Rukhsana Kausar and 4 others (2000 SCMR 707)***, ***Ghulam Qadeer ETC vs Mst. Rahat Yasmin ETC (PLJ 1996 Lahore 407)***, ***Javed Irfan vs Additional District Judge (2007 MLD 1089)***, ***Mst. Barkat Bibi vs Mst. Rubina Kausar and 2 others (2009 YLR 1106)***.

3. It is contended by learned A.A.G and learned counsel for the private respondent that the private respondent is having a suitable job he is not remarried and welfare of the minors lies with him being their father. By contending so, they sought for dismissal of the instant Constitutional Petition. In support of their contention they relied upon cases of ***Nasir Raza vs Additional District Judge, Jhelum (2018 SCMR 590)***, ***Dilawar Mehmood alias Dulli and another vs The State and others (2018 SCMR 593)***, ***Mst. Sardaran (deceased) through L.Rs vs District Judge, Mianwali and 2 others (2016 MLD 801)***, ***Syed Muhammad Mahmood Alam vs Muhammad Afsar Khan and another (2013 MLD 741)*** and ***Ghulam Mustafa vs Shamim Akhtar and 2 others (2017 YLR Note 45)***

4. I have considered the above arguments and perused the record.

5. Admittedly, the private respondent is father of the minors; he after death of his wife Mst. Zahidan it is said has not remarried therefore, the welfare of the minors obviously would lie with him and such issue has properly been made with by learned Courts

below. Learned Courts below even otherwise while appointing the private respondent as Guardian of the minors with visiting right to the petitioners by way of impugned judgment[s] has committed no wrong which could be made right by this Court in exercise of its constitutional jurisdiction.

6. The case law which is relied upon by learned counsel for the petitioner is on distinguishable facts and circumstances. In first three cases there was dispute between husband and wife over custody of their kids. And in last fourth case husband and wife after divorce remarried therefore the custody of the kids was given to their grandfather. No such issue in the instant matter is involved.

7. Consequent upon above discussion, the instant constitutional petition is dismissed together with the listed applications.

JUDGE

Ahmed/Pa,