

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-502 of 2021

Date	Order with Signature(s) of Judge(s)
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- 1.For hearing of CMA No.3261/2021.
- 2.For hearing of CMA No.3108/2021.
- 3.For hearing of main case.

21.04.2022

Mr. Falak Sher Khan, Advocate for Petitioner.
 Ms. Mariam Bibi, Advocate for Respondent No.1.

ZAFAR AHMED RAJPUT, J:- Respondent No.1 herein filed Guardian and Wards Application No.1842/2020, under section 25 of the Guardian and Wards Act, 1890 ("***Application***") against the petitioner and minor babies Ayesha aged 15 and Asia aged 12, alleging therein that, on 31.12.2005, she was married to late Abdul Majeed, the son of the petitioner, and out of said wedlock the above-named minor babies were born. It was further alleged that after the death of her husband, the petitioner, who is the father-in-law of the respondent No.1, expelled her from his house. She tried to visit the minor babies, but petitioner refused to allow her; hence, she filed Application. It was the case of the respondent No.1 that she wanted to have custody of the minor babies for their better upbringing and their welfare lies with her. The petitioner contested the Application by filing written statement wherein he pleaded that being head of the family, he kept the minor babies in a family environment along with their grandmother, paternal uncle and aunt. The learned Family Judge after recording pro and contra evidence of the parties allowed the Application, vide order dated 28.04.2021, holding that the respondent No.1 was entitled for the permanent custody of the minor babies and that their welfare lies with her mother. Against that order, the petitioner preferred G&W Appeal No.91 of 2021, which was heard and dismissed by the learned

Additional District Judge-VII (MCAC) Karachi-South, vide order dated 31.05.2021. It is against that concurrent findings of the Courts below on the issue of entitlement of custody and welfare of the minors, the instant Constitutional Petition has been preferred by the petitioner.

2. After hearing the learned counsel for the parties and perusing the material available on record with their assistance, it reflects that the minor babies resided with the respondent No.1 for 08 years at the house of the petitioner after death of their father in 2010 and, thereafter, they were separated from respondent No.1 when she left the house of petitioner/her father-in-law. The respondent No.1 being mother has better right to have custody of the minor babies. Baby Ayesha and Baby Asia being about 15 and 12 years of age, respectively, are in their growing age; hence, it is in their interest to stay with their mother/ respondent No.1. The petitioner/grandfather, uncle and aunty of the minor babies cannot be substitute of their mother. Learned counsel for the petitioner failed to disclose any ground for the disqualification of the respondent No.1 from the custody of her minor daughters.

3. For the forgoing facts and reasons, there appears no illegality or infirmity in the impugned orders passed by the Courts below requiring any interference of this Court under its Constitutional jurisdiction; hence, instant petition is dismissed being devoid of any merit, along with pending applications, with no order as to costs.

JUDGE