

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

Date	Order with signature of the Judge
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C.P.No.S-102 of 2024  
Islamuddin & another ..... Vs.....Rehan Ahmed.

13.12.2024

Mr. Shamshad Ali Qurshi, advocate for petitioners  
Mr. Khait Kumar, advocate for respondent.

ORDER

MUHAMMAD IQBAL KALHORO J: Respondent, father of minor namely Ali Haider born on 24.10.2019 filed an application under Guardian & Wards Act, 1890 before Family Court Karachi East seeking his permanent custody against petitioners. This application was allowed vide order dated 18.10.2023 which was challenged by the petitioners in appeal before learned Additional District Judge, Karachi East. The appeal has been dismissed vide impugned order. Both the courts have ordered the minor son of the respondent, who is grandson of petitioners be handed over to respondent on the ground that his welfare lies in living with him who is his real father.

2. Case of the petitioners is that after death of their daughter, minor has been living with them and even as per section 253 of Mohammadan Law, after death of mother custody right of minor is with maternal grandmother and, therefore, both the impugned orders are not sustainable in law.

3. On the other hand, learned counsel for respondent has supported impugned order and has relied upon case law reported in 2018 SCMR 590.

4. I have considered submissions of the parties and perusal material available on record. There are concurrent findings of the facts given by both the courts below against the petitioners. Both the courts after appreciating evidence of the parties have concluded that welfare of the minor lies in living with his father, respondent, who is residing in a joint family system with his brothers and sisters, sufficient to take care of minor behind him. It has also come on record that respondent has not contracted any second marriage and as far as mother of the minor is concerned, she has already expired. Petitioners are aged grandparents of the minor, who are suffering from various diseases. The actual facts are that the minor is living with her Khala( aunty) and not with

grandparents. The said Khala was not even produced by the petitioners in the case to support them that she was taking care of the minor and if so under what right. It is an admitted position that findings arrived by both the courts cannot be disturbed in exercise of constitutional jurisdiction. The family Court in its order has even referred a small house in which petitioners are residing with their three married and two unmarried sons, the daughter who is purportedly taking care of the minor is also residing with them. Whereas on the other hand, respondent who is actual father is employed well and can take care of his son being natural guardian. I do not see any illegality in concurrent findings arrived at by both the courts, hence this petition being devoid of merits is dismissed alongwith pending applications.

The petition stands dismissed in the above terms.

**J U D G E**

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