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IN THE HIGH COURT OF ORISSA, CUTTACK

GUAP No.03 of 2022

(In the matter of an application under Section 19 of the Family Courts Act, 1984 read with Section 47 of the Guardians and Wards Act, 1890)

Ramakanta Majhi ..... Appellant

-Versus-

Sanatan Majhi & another ..... Respondents

Advocate for the parties

For Appellant : Mr. P.K. Sahoo, Advocate

For Respondents : None

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing & Judgment: 01.12.2025

S.K. Mishra, J. The present Appeal has been preferred under Section 19 of the Family Courts Act, 1984 read with Section 47 of the Guardians & Wards Act, 1890 by the Appellant, who is the natural father of the Respondent No.2, challenging the Judgment dated 12.07.2022 passed by the learned Judge, Family Court, Bhadrak in

Guardian Misc. Case No.13 of 2021, vide which his prayer for guardianship stood rejected.

2. Though notice was duly served on the Respondent No.1, who is the maternal grandfather of Respondent No.2 (minor child) and represents him in this Appeal, chose not to appear in this Case to oppose the prayer made in the Appeal. Hence, the matter was taken up for hearing on 06.11.2025, followed by further hearing today.

3. Heard learned Counsel for the Appellant.

4. As is revealed from the record, the Appellant preferred Guardian Misc. Case No.13 of 2021 before the learned Judge, Family Court, Bhadrak with the following prayers:

> "*a. That the petitioner be declared as legal guardian and custodian of respondent No.2 and Respondent No.1 be directed to hand over Respondent No.2 to the custody of petitioner within stipulated period.*
>
> *b. That the cost of this litigation be passed against the Respondent No.1 and in favour of the petitioner.*
>
> *c. That any other relief petitioner is entitled be awarded to the petitioner."*

4.1 It was specifically pleaded in Guardian Misc. Case No.13 of 2021 that the Appellant (Petitioner before the Court below) and deceased Ranjulata are the husband and wife. After their marriage was solemnized on 19.06.2019 according to Hindu rites and customs, both of them were living as husband and wife peacefully. When Ranjulata had been to her paternal house, she expired there due to cardiac arrest. Since then the minor child is with the Respondent No.1.

The Respondent No 1, who is the maternal grandfather, has kept Respondent No 2, the minor son of the Appellant. The Respondent No 1 did not allow the Appellant to see his son. The Appellant visited his in-laws house time and again but the Respondent No 1 allegedly confined the Respondent No 2 in a room and did not allow the Appellant to see his son which is nothing but illegal confinement amounting to an offence. That apart, it was also alleged that the life of Respondent No 2 is not safe at the house of Respondent No. 1. After the death of Ranjulata Majhi, the Appellant is the legal guardian-

custodian as per Hindu Minority and guardianship Act. Still, he has been deprived to get back his son due to illegal interference and illegal confinement by Respondent No 1.

It was also pleaded before the Court below that the Respondent No 2 is a child of 10 months and he has been deprived to get nutritious food and unable to lead his normal life and his life is in danger. In spite of repeated requests, the Respondent No 1 is not allowing the Appellant to remain with Respondent No 2. The request to take Respondent No. 2 was refused by Respondent No 1, thereby compelling the Appellant to knock the door of the learned Court below seeking the relief of guardianship of the Respondent No.2.

4.2 The Respondent No.1 appeared before the Court below and filed an objection admitting therein that the Petitioner (Appellant herein) as the natural guardian of Respondent No.2 (minor child).

However, the prayer for guardianship was opposed on mere apprehension that the present

Appellant (Petitioner before the Court below) is a young person and he may marry another girl for his future. If it so happens, the step mother cannot take proper care of the new born child, which is often seen in present society.

Such prayer was also opposed on the ground that the Appellant and his family members never visited the new born child for a single day or single occurrence. That apart, in a Panchayat meeting, it was held that the in-laws of deceased will return back all the gold and silver ornaments and household articles to the Respondent No-1 and they will return back Rs.50,000/- which was given at the time of marriage. Further, it was also held that, as there is no female member in the family of the Petitioner, the new born child will live with his maternal grandfather and grandmother and the Appellant will provide a sum of Rs.30,000/- for a minimum period of 5 years towards maintenance of the new born baby. But it is a matter of regret, the Appellant and his family members denied to return gold and silver ornaments and

household articles to the Respondent No-1 so also the money. They also did not give a single pie for the maintenance of the new born child. Hence, there is every apprehension of proper maintenance of the new born infant at the house of the Appellant.

5. Ultimately, the learned Court below passed the impugned judgment on 12.07.2022 rejecting such prayer for custody of Respondent No.2. Paragraph-7 of the impugned judgment, being relevant, is extracted below:

> ***"7.*** *It is the settled principle of law that the burden of proof lies on the person who asserts a certain thing. Here, in this case, the initial burden lies upon the petitioner to prove the fact that none other than he himself is the father and natural guardian of the respondent no.2. After going through the evidence of PW-1 and on perusal of case record, it appears that the petitioner has claimed himself to be the father of the respondent no.2. He has also claimed that his wife and the mother of the respondent no.2 is already dead. However, on perusal of the entire case record, it appears that not a single document to that respect is available in' the case record. The petitioner has not filed the birth certificate and death certificate of his son and wife respectively before this Court to ascertain the fact that none other than he is the natural guardian of the respondent no.2. Similarly, not a single independent witness has been examined on behalf of the petitioner to ascertain the paternity of the respondent no.2. In absence of any such clear, cogent and trustworthy evidence in a case under the Hindu Minority and Guardianship Act involving the life of a minor child aged about 10 months is involved, it will be just and proper to rely upon the uncorroborated oral evidence of the petitioner.*

Further, the petitioner has mentioned in his pleadings as well as in his evidence that he was leading a happy life along with his wife and son in his house prior to death of his wife. This in other words means he might have got the birth certificate of the respondent no.2. But, he has not explained anything in his evidence version what prevented him from filing the said documents before this Court in order to enable this Court to reach at a just and conclusive decision."

6. Drawing attention of this Court to the Objection/Written Statement, learned Counsel for the Appellant submits, Respondent No.1 not only admitted that the Appellant is the natural father of the Respondent No.2, but also chose not to lead any rebuttal evidence to substantiate the stand taken in his written Statement to oppose the prayer made in the Guardian Misc. Case No.13 of 2021. That apart, the learned Court below also failed to take note of the provision enshrined under Section 58 of the Indian Evidence Act, 1872, which mandates that the facts admitted need not be proved. Accordingly, a prayer is made before this Court to set aside the impugned judgement and allow the prayer for guardianship of the Respondent No.2.

7. As is revealed from the impugned Judgment, the learned Court below rejected the prayer of the Appellant for guardianship solely on the ground that the Appellant (Petitioner before the Court below), though claimed himself to be the natural father of the Respondent No.2, failed to produce the birth certificate of the minor child so also death certificate of his wife before the Court below to ascertain the fact that none other than he is the natural guardian of the Respondent No.2. That apart, the other reason to reject such application was, except the present Appellant (Petitioner before the Court below), not a single independent witness was examined on behalf of the Petitioner (Appellant herein) to ascertain the paternity of the Respondent No.2.

8. Apart from the pleadings made in the Plaint, the Respondent No.1, who was also the Respondent No.1 before the Court below, also admitted such claim made by the Petitioner in Guardian Misc. Case No.13 of 2021. Paragraph 6.(i) of the Objection filed by the Respondent

No.1 in Guardian Misc. Case No.13 of 2021, being relevant, is extracted below:

> *"6. That the real story behind this case is as follows:*
> *(i) That, the petitioner and the daughter of the present Respondent No.1 namely Ranjulata are legally married husband and wife, their marriage was solemnized on 19.06.2019 and the couple was blessed with the male child namely Rashmi Ranjan who is the respondent No.2 of this case on dt..... and is 1 year old now."*

9. Section 58 of the Indian Evidence Act, 1872 mandates that facts admitted need not be proved, which is reproduced below for ready reference.

> *"**58. Facts admitted need not be proved**.—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, **or which, before the hearing, they agree to admit by any writing under their hands**, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:*
> *Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."*
>
> ***(Emphasis supplied)***

10. The Supreme Court in ***Nil Ratan Kundu and another Vrs. Abhijit Kundu***, reported in (2008) 9 SCC 413, while deciding the principle governing the custody of minor child, held as follows:

> *"**52**. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant*

statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. ***A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child.*** *In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."*

(Emphasis supplied)

11. Hence, this Court is of the view that despite such admission made by the Respondent No.1 in his Objection/Written Statement, the learned Court below erred in law by coming to a conclusion that the present Appellant failed to prove that he is the natural father of the Respondent No-2 by producing and proving the death certificate of his wife so also the birth certificate of his son. Hence, the impugned judgment deserves interference.

12. So far as natural guardian, Section-6 of the Hindu Minority and Guardianship Act, 1956, being relevant, is reproduced below:

> "***6. Natural guardians of a Hindu minor***.—*The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—*
>
> *(a)* ***in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;***
>
> *(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;*
>
> *(c) in the case of a married girl—the husband:*
>
> *Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—*
>
> *(a) if he has ceased to be a Hindu, or*
>
> *(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).*
>
> *Explanation.—In this section, the expressions "father" and "mother" do not include a step-father and a step-mother."*
>
> ***(Emphasis supplied)***

13. Admittedly, the Respondent No.2, after the death of his mother, when he was an infant and only few weeks old, has been separated from the Appellant-father .Since then he has been living with his maternal grandfather (Respondent No.1), who cannot have a better claim than

the Appellant-father, who is the natural guardian. There is no allegation of any matrimonial dispute when the mother of the child was alive nor a complaint of abuse was perpetrated against the wife or son. There is no allegation that the Appellant-father, who is the natural guardian of the Respondent No.2 is unemployed and uneducated and there is nothing standing against his legal rights; as a natural guardian, and legitimate desire to have the custody of his child.

14. Neither in the Plaint nor in the Written Statement in Guardian Misc. Case No.13 of 2021, the date of birth of the Respondent No-2 has been mentioned. Rather, in the Plaint, which was presented on 20.04.2021, it has been mentioned that the Respondent No-2 was 10 months old as on the said date. Hence, it can be well presumed that, as on date, Respondent No-2 would be around 5 & 1/2 years old

15. The father, being the natural guardian of the minor child, is having a legal right to claim the custody of the child, once the child attains the age of 5 years in

terms of Section-6 of the Hindu Minority and Guardianship Act, 1956. However, after the death of his wife, the entitlement of Appellant-father to the custody of child cannot be disputed. Hence, this Court is of the considered view that, in the facts and circumstances of the present case, the father, being the natural guardian, after the death of his wife, was justified to approach the learned Court below for guardianship of the Respondent No.2.

16. This Court is of further view that, if no custody is granted to the Appellant, the Court would be depriving both the child and the father of each other's love and affection to which they are entitled. As the child was in tender age at the time of death of his mother and is staying with his maternal grandfather, when he was an infant and at present he would only be around 5 & 1/2 years old, he would be unable to express his intelligent preferences. That apart, his choice cannot be ascertained at this stage. If custody of the Respondent No.2 is granted to the Appellant at this stage, with the passage of

time, he might develop more bonding with the Appellant. But, if the prayer of the Appellant for guardianship is further delayed, after some time, the Respondent No.2 may be reluctant to go to his natural father in which case, the Appellant might be completely deprived of his child's love and affection. Keeping in view the legal provisions under the Hindu Minority and Guardianship Act, 1956, the welfare of the child , the right of the father to have his custody and after consideration of all the facts and circumstances of the case detailed above, this Court finds that the learned Court below was not justified to reject such prayer for custody of the child on technical ground for not producing and proving the death certificate of Appellant's wife as well as birth certificate of the Respondent No.2.

17. As discussed herein above, this Court finds that, apart from the Appellant being the natural guardian, even in order to ensure the welfare of the minor child, i.e., the Respondent No.2, more particularly, after the death of his mother, should live with his natural

father. This Court is hopeful that, since the minor child is of tender age, he will get adapted to his natural father very well in a short period, if his custody is handed over to the Appellant-father. This Court, therefore, is inclined to allow this Appeal.

18. In the result, this Court passes the following order:

i) The Appeal is allowed;

ii) The impugned judgment dated 12.07.2022 passed by the learned Judge, Family Court, Bhadrak in Guardian Misc. Case No.13 of 2021 is set aside;

iii) The Respondent No.1 is directed to handover the custody of the minor child namely, Rashmikanta Majhi(Respondent No.2) to the Appellant forthwith;

iv) However, this Court permits the Respondent No.1 (the maternal grandfather of the Respondent No.2) to meet the minor child namely,

Rashmikanta Majhi (Respondent No.2) at the residence of the Appellant, as and when he so desires, with prior intimation to the Appellant regarding the date and time of such visit.

19. Accordingly, the Appeal stands disposed of.

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S.K. MISHRA, J.

Orissa High Court, Cuttack
The 1st December, 2025/Prasant

Signature Not Verified
Digitally Signed
Signed by: PRASANT KUMAR PRADHAN
Designation: Secretary
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 04-Dec-2025 16:44:05