

**IN THE COURT OF LUBNA ZAMAN
ADDITIONAL DISTRICT JUDGE-VI, MARDAN**

Appeal No.52/FCA of 2024

Date of Institution: 10.06.2024

Date of decision: 03.02.2025

1. Mst.Nezhat wife of Zahir Shah.
2. Zahir Shah son of Anwar Shah r/o Kot Ismailzai Tehsil & District Mardan.
3. Arman Hadi (minor aged $\frac{3}{4}$ years) son of Asif Ali through appellant No.1. **... (Appellants)**

V E R S U S

1. Asif Ali son of Mukamil Shah.
2. Mst.Bushra wife of Asif Ali r/o near Railway Phatak village Rashaky Tehsil & District Nowshera. **.....(Respondents)**

JUDGMENT

1. Appellants have preferred this appeal against the consolidated judgment, decree and order dated 16.04.2024 of the learned Senior Civil Judge (Admn) Mardan.
2. Facts of the case are that the appellants being the maternal grandparents of the minor namely Arman Hadi aged $\frac{3}{4}$ years filed a family suit for custody against the respondents wherein they also sought the custody of the other siblings of the minor namely Sonia aged 8/9 years, Sania aged 6/7 years, Tabeer aged 4/5 years and Khayam aged 10/11 years and additionally they also sought maintenance allowance for the minor Arman Hadi. The respondent No.1 is the real father of the minor whereas respondent No.2 is his step mother. The real mother of the minors died her natural death after the birth of the minor Arman

Hadi and thereafter he was raised in the house of maternal grandparents/appellants. In the meanwhile, the respondent No.1 being the father of minor Arman Hadi filed a counter family suit for seeking custody of minor Arman Hadi. Both the suits were consolidated and as a result the family suit filed on behalf of the appellants/maternal grandparents was dismissed to the extent of custody of the minors whereas the family suit filed by the respondents was decreed and custody of the minor Arman Hadi and his siblings were handed over to respondent No.1 being real father vide impugned consolidated judgment, decree and order dated 16.04.2024.

3. Feeling aggrieved the appellants have challenged the consolidated judgment dated 16.04.2024 through filing instant appeal to the extent of granting the custody of the minor Arman Hadi to the respondents. In addition, they have also challenged the consolidated judgment regarding the fixation of maintenance allowance @ Rs.5000/- per month of the minor since his birth when he has remained in the custody of the appellants till the decision of the suit and medical expenses worth Rs.20,821/- for the reason that the appellants have incurred a huge sum of money on his wellbeing and the amount of maintenance allowance for the given period is insufficient. The appellants have requested for granting the custody of minor to them being his maternal grandparents and enhancing the rate

of maintenance allowance since his birth till he attains the age of majority.

4. Arguments heard and record perused.
5. Perusal of case record would reveal that admittedly the mother of minor Arman Hadi namely Mst.Sobia deceased was the daughter of the appellants and first wife of the respondent No.1. As per evidence on record, she died in MH Rawalpindi due to HIV, sepsis and septic shock leaving behind three daughters namely Sonia aged 8/9 years, Sania aged 6/7 years and Tabeer aged 4/5 years and two sons namely Khayam aged 10/11 years and Arman Hadi presently 03 years. Currently, the three daughters and one son are in the custody of respondent No.1 whereas the minor Arman Hadi was in the custody of maternal grandparents/appellants at the time of institution of family suits.
6. The PW-1 is the caretaker of Arman Hadi and sister of Mst.Sobia deceased. She has appeared in the witness box and stated that the minor Arman Hadi is in their custody since his birth because his mother fell victim to HIV and died in the MH Rawalpindi. She stated that the respondent No.1 has neglected to maintain the minor after the death of Mst.Sobia deceased and contracted second marriage with respondent No.2 but after ¾ years he has filed suit for custody of minor Arman Hadi knowingly that the minor is attached to the appellants and taken good care of by them. In cross examination she recalled the

instances when the siblings of the minor were beaten by the respondent No.1. She has admitted in cross examination that the respondent No.1 is taking care of three daughters and one son. She could not disclose a single incident to show that the respondent No.1 has maltreated the other siblings of the minors or he has not taken good care of them. The citing of a single instance on behalf of PW-1 without any concrete evidence cannot brush aside the fatherly affection of the respondent No.1 towards his children.

7. The maternal grandmother of minor Arman Hadi while appearing as PW-2 also could not furnish a single explanation for declaring the respondent No.1 being unfit to seek the custody of the minor. She has admitted that her daughter Mst.Sobia died in the hospital, however later on she made improvement that she was poisoned by respondent No.1. As already discussed earlier, the medical record (EX.DW-3/1) shows that she died from HIV and septic shock at MH Rawalpindi and all her medical expenses were paid by the respondent No.1 which shows that the respondent No.1 has taken care of the mother of the minor in the hospital when she was on her death bed.

8. The maternal grandfather (APW-1) has although claimed the custody of minor Arman Hadi but he stressed upon the medical expenses which he has incurred on the treatment of epilepsy and surgery of the minor. In rebuttal the respondent No.1 (DW-1) has produced the matric certificate (EX.DW1/1)

of his first wife Mst.Sobia deceased and stated that she got education after her marriage with him. He disclosed that he was employed in Pakistan Army and taking good care of his children. He has stated that he has landed property in the village and receiving pension from Pakistan Army. He disclosed that a jirga was convened regarding the custody of the minor Arman Hadi but the appellants failed to fulfill the terms and conditions of the compromise. He admitted that all the siblings of Arman Hadi are studying in reputed institutions. Similarly, the respondent No.1 has examined jirga member (DW-2) and stated that a jirga was convened wherein the appellants agreed to transfer the custody of the minor Arman Hadi to the respondent No.1 after his second marriage but when the respondent No.1 contracted second marriage then they refused to hand over the minor to the respondent No.1. He also admitted that the minors are studying in a reputed school. Likewise, DW-3 was examined who has corroborated the evidence of DW-1 and DW-2.

9. In the light of evidence of the parties, it is evident that the respondent No.1 being the father of the children is taking good care of them. He is financially stable and contracted second marriage at the wish of the appellants but later on the appellants to hand over the custody of minor Arman Hadi to the respondent No.1. The mother of the minor Mst.Sobia deceased was got educated after marriage by the respondent No.1 up to matric and he has taking good care of her during her last days in the

hospital. The PWs have not disclosed a single good reason to show the respondent No.1 is unfit to retain the custody of the minor Arman Hadi. All the DWs have supported the stance of respondent No.1 that he is a good father and taking good care of their education and wellbeing. More so, all the other siblings of the minor Arman Hadi are currently in the custody of respondent No.1, therefore the wellbeing of the minor Arman Hadi demands the presence of his siblings around him. If he is cut off from the siblings or separated from them then his psychological growth and emotional wellbeing would also be affected. The presence of other siblings around him would provide a better atmosphere for his development. The respondent No.1 has never shut his eyes towards the minor Arman Hadi rather he left him with maternal grandparents on their sheer insistence and convened a jirga for persuading them to hand over his custody when they refused to transfer his custody from respondent No.1.

10. So far as the maintenance allowance and medical expenses, awarded to the appellants are concerned; the amount of maintenance allowance awarded to them for taking care of the minor Arman Hadi is accordance with the financial means of the respondent No.1 and rate of inflation since then. The appellants on one hand are seeking custody of the minor due to their love and affection but at the same time they are also interested in monetary benefit; hence, two opposite prayers are made whereas being the maternal grandparents their love and

affection for the minor should be the governing and predominant factor in seeking the custody of the minors.

11. For reasons given above the learned Senior Civil Judge (Admn) Mardan has rightly passed the impugned consolidated judgment dated 16.04.2024 which does not need interference; thus the appeal is dismissed and the impugned consolidated judgment is maintained. Cost shall follow the events.

12. Requisitioned record be returned to the quarter concerned alongwith copy of this judgment and file of this court be consigned to record room after its necessary completion and compilation.

Announced
03.02.2025

(Lubna Zaman)
Additional District Judge-VI,
Mardan

C E R T I F I C A T E

Certified that this judgment consists of (07) pages. Each page has been read, corrected wherever necessary and signed by me.

(Lubna Zaman)
Additional District Judge-VI,
Mardan