

Misc. (J) No. 47/2019

ORDER

02-04-2022


Learned Counsel for the petitioner has placed on record the paper publication in local newspaper Dainik Janambhumi on 01-03-2022. None has appeared to file objection and hence, the notice is accepted to be served upon the respondent Smt. Sajina Begum.

This petition under Order IX Rule 13 read with Section 151 CPC has been filed by Md. Hakimuddin Ahmed praying for setting aside the Order dtd. 22-10-2019, passed in Misc. (G) Case No. 13/2017.

Notice of the present Misc. (J) Case was tried to be served through registered post with A/D, however, the same was returned without service. Subsequently, steps were also taken through Process Server at the last known address of the respondent, but the same was received back unserved, with a report that none recognized the said Sajina Begum. In the said circumstances, the petitioner caused paper publication in local newspaper Dainik Janambhumi on 01-03-2022. In spite of the same, none has come forward to contest the Misc. (J) Case No. 47/2019. Hence, the said Misc. (J) Case proceeded ex-parte and the petitioner was heard.

Learned Counsel for the petitioner submitted that Md. Hakimuddin Ahmed had through his engaged Counsel filed his written statement in Misc. (G) Case No. 13/2017, stating inter alia that said Smt. Sajina Begum had, after the death of her husband Fajal Ali on 21-11-2015, abandoned her two minor sons and remarried. Thereafter, both the minors were being looked after and taken care of by Md. Hakimuddin Ahmed (grandfather) and Jubeda Begum (grandmother). However, subsequently without the knowledge of the said Md. Hakimuddin Ahmed, the case ended in ex-parte Order being passed in favour of Smt. Sajina Begum. By the said Order, Smt. Sajina Begum being the mother was appointed as guardian of both her sons Farid Ali and Sahid Ali.

Learned Counsel for the petitioner has submitted that the said Order was not within the knowledge of the grandfather Md. Hakimuddin Ahmed, in as much as, the said Sajida Begum never took the minor children from the custody of their grandparents. It



is only sometime in October-November, 2019, the said Order came to knowledge of the petitioner and the petitioner filed the present Misc. (J) Case.

Learned Counsel submits that the Order dtd. 24-10-2019 in Misc. (G) Case No. 13/2017 remains only on paper, in as much as, the said two children continued to be in the care and custody of their grandparents, with the whereabouts of Smt. Sajina Begum not known.

This Court has duly considered the submissions so advanced and taken note of the fact that both the minor children namely, Farid Ali and Sahid Ali still continue to be in the care of the petitioner Md. Hakimuddin Ahmed. Being satisfied, the Order dtd. 24-10-2019, is hereby vacated and Misc. (J) Case No. 47/2019 is allowed.

Let Misc. (G) Case No. 13/2017 be restored to file and let the present petitioner take steps once again in respect of Smt. Sajina Begum in Misc. (G) Case No. 13/2017.


District Judge,
District Judge
Dibrugarh