

1998 (2) K.L.J. 573

IN THE HIGH COURT OF KERALA

Present: P.A. Mohammed & D. Sreedevi, JJ.

Yusuf v. Sakkeena

Mohammedan Law — Secs.352 & 17(1) — Application for custody of minor children by the father or mother — Paramount welfare of the minor as the sole consideration for allowing or disallowing the application.

Held:— When Sec.17(1) of the Act is read conjunctively with the provisions contained in Sec.352 aforementioned, what would reveal is that the paramount welfare of the minors is the sole consideration for allowing or disallowing an application for custody of the minor children. In this case, the court below has fully evaluated the evidence on record and came to a positive conclusion that the interests and welfare of the minor children would be sufficiently safeguarded by the mother. No tangible reason has been brought forward to have a different conclusion on this question. The appreciation of the evidence available in this case would not take us to have a different view from that arrived at by the court below. Therefore, we are of the view that the paramount welfare and welfare of the minor children in this case would be sufficiently safeguarded by the mother, if the custody of the minor children is given to her. (para.6)

Guardian & Wards Act, 1897 — Secs.7 & 25 — Application for custody of minor children — When the custody is handed over to the mother, the visitation right of the father has to be recognised.

Held:— The counsel for the appellant pleaded that the appellant may be allowed to visit the children as and when necessary. In other words, the visitation right of the appellant has to be recognised. It may not be proper for this court to deny the father of the minor children such right even in a case where the custody is handed over to the mother in the interests and welfare of the minor children. Therefore, we recognise the visitation right of the appellant and allow him to exercise the same as and when he wants to exercise his right. The court below will pass orders on merits on such occasions. (para.7)