REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SURINDER KAUR SANDHU V. HARBAX SINGH SANDHU (1984)

BENCH: Mr. Justice O. Chinnappa Reddy & Mr. Justice E.S. Venkataramiah

DECIDED: May 3, 1984

RATIO DECIDENDI & PRECEDENTIAL CRUX:

Spouse who removes a child from matrimonial domicile in violation of court order cannot seek custody in domestic courts; matrimonial home has closest nexus.

1. Factual Matrix & Background:

The parties were married in India but settled in England, where a child was born. The husband arranged a criminal conspiracy to kidnap the boy and brought him to India in violation of an English court order. The mother filed a habeas corpus writ petition in India.

2. Substantive Legal Questions Framed:

Whether an Indian court should repatriate a child to the matrimonial domicile where the child was born and brought up, following parental abduction by one spouse.

3. Analysis & Ratio Decidendi:

The Supreme Court directed that custody of the child be handed over to the mother for return to England. The Court held that modern matrimonial law recognizes the matrimonial home as the forum having the closest connection with the family. A parent who takes the law into their own hands and abducts a child cannot be permitted to benefit from their wrongful conduct in domestic courts.

4. Principles Enunciated:

- 1. The court of the matrimonial domicile has the closest nexus to decide child custody.
- 2. A parent cannot create jurisdiction by illegally removing a child from foreign domicile.
- 3. Comity of courts and prevention of parental abduction require return to the natural home.

5. Practical Litigation Implications:

- In defending against parental abduction claims, demonstrate that the children were ordinary residents of the foreign domicile and that the taking spouse acted in breach of law.

.....J.

[SUPREME COURT BENCH]

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