

1942

Present : Wijeyewardene J.

FAIZ MOHAMED v. ELSIE FATHUMMA.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Habeas Corpus*.*Muslim Law—Custody of child—Right of father—Writ of Habeas Corpus.*

Under the law applicable to the Hanafi sect of Muslims the father is entitled to the custody of a male child on the completion of the seventh year, unless there are strong grounds for interfering with his right.

THIS was an application for a writ of *habeas corpus*.

S. A. Marikar, for petitioner.

E. D. Cosmè, for respondent.

November 12, 1942. WIJEYWARDENE J.—

This is an application for the custody of a male child. The petitioner is the father of the child. He is a Baluchi belonging to the Hanafi sect of Muslims. The second respondent, the mother of the child, is a member of the Burgher community. She was a Christian until her marriage when she became a convert to Islam. The child was born on September 27, 1935. The petitioner and the second respondent lived together for a few months after their marriage and then separated. In June, 1936, the petitioner applied for the custody of the child and his application was refused by this Court in January, 1937, on the ground that the second respondent was entitled to the custody of the male child under seven years.

Under the Hanafi law the mother's right to the custody of a son ends with the completion of his seventh year. Vide *Ameer Ali (4th edition)*, Vol. 2, p. 295. The present application cannot, therefore, be refused unless there are strong grounds for interfering with the legal rights of the father *Idu v. Amarani*¹; *Ran Menika v. Paynter*². The proceedings in this case do not disclose any such grounds. The petitioner has maintained the child during the last seven years and provided for his education at Zahira College. On the other hand the second respondent lives with her parents and sisters all of whom are Christians. They appear moreover to be in impecunious circumstances. So long as the boy remains in the custody of the mother he will be brought up in a non-Muslim home. I hold that the petitioner is entitled to the custody of the child, and order that the child be given over to the petitioner on or before January 31, 1943. I have suspended this order until January 31, 1943, in order to enable the second respondent to give more opportunities to the child to come in contact with the petitioner and get to know him more intimately. I trust that the second respondent will consult the true interests of the child and try to instil into his mind feelings of love for the father so that he may not feel keenly the separation from the mother when he leaves her at the end of the period fixed by me. I make no order as to costs.

Application allowed.

¹ 8 *all.* 323.

² 34 *N. L. R.* 127.