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Custody of minor shall be with mother, rules SC

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New Delhi: In a custody battle between estranged parents, a minor child, under five years, shall be allowed to remain with the mother, the Supreme Court has ruled saying that in such cases the child should not be treated as a "chattel".

The court said that under Hindu Minority and Guardianship (HMG) Act, Section 6(a), a father can be guardian of the property of the minor child but not of his person if the child is less than five years old.

"There can be no cavil that when a court is confronted by conflicting claims of custody there are no rights of the parents which have to be enforced; the child is not a chattel or a bull that is bounced to and fro the parents. It is only the child's welfare which is the focal point for consideration. Parliament rightly thinks that the custody of a child less than five years of age should ordinarily be with the mother and this expectation can be deviated from only for strong reasons," a bench of Justices Vikramajit



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Sen and C Nagappan said. The apex court quashed the Bombay high court's or-

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der which granted custody of a two-year-old child to father on the ground that the mother had not established her suitability to be granted interim custody of the infant. "The HMG Act postulates

that the custody of an infant or a tender aged child should be given to his/her mother unless the father discloses cogent reasons that are indicative of and pre-empt the livelihood of the welfare and interest of the child being undermined or jeopardized if the custody is retained by the mother," it said.

"The Act carves out the exception of interim custody. In contrast to distinction of guardianship, and then specifies that custody should be given to the mother so long as the child is below five years in age," it said.

The bench added, "The Act immediately provides that the custody of a minor who has not completed the

age of 5 years shall ordinarily be with the mother." It further said, "The use of the word 'ordinarily' cannot be over-emphasized. It carries a presumption, albeit a rebuttable one, in favour of the mother."