

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

RP (FAM. CT) No. 2 of 2016

Ref :- Judl. Misc. Case No. 64 of 2016

Mat. (G&W) Case No. 24 of 2015

Smt. Telem Robita Devi, aged about 35 years, daughter of
Telem Dhananjoy Singh of Kongba Kshetri Leikai, P.S.
Irilbung, Imphal East District, Manipur.

... Petitioner

-VERSUS-

Shri Ramesh Kumar Gupta, aged about 48 years, son of
late Dwarika Prasad of Dona Presidency, D-1, Six Mile,
V.I.P. Road, Chachal, Guwahati – 821 022, Assam.

... Respondent

**BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN**

For the Appellant :: Mr. Kh. Santa, Adv.

For the Respondent :: Mr. P. Tomcha, Adv.

Date of Hearing and
reserving Judgment & Order :: 12.10.2023

Date of Judgment & Order :: **30.10.2023**

**JUDGMENT AND ORDER
(CAV)**

Heard Mr. Kh. Santa, learned counsel for the
petitioner and Mr. P. Tomcha, the learned counsel for the
respondent.

2. This revision is filed by the petitioner under Section 19(1) of the Family Courts Act, 1984 against the order dated 6.8.2016 passed by the learned Judge, Family Court, Manipur in Judl. Misc. Case No.64 of 2016 in Mat. (G&W) Case No.24 of 2015.

3. The husband has filed Judl. Misc. Case No.64 of 2016 challenging the territorial jurisdiction of the Family Court, Manipur to entertain Mat. (G&W) Case No.24 of 2015 and sought direction to return Mat. (G&W) Case No.24 of 2015 to file a suit before the Court at Kamrup District having jurisdiction where the minor children ordinarily resides.

4. Mat. (G&W) Case No.24 of 2015 has been filed by the wife under Section 25 of the Guardians & Wards Act, 1890 praying for declaration to declare that the wife as guardian for the custody of three minor children.

5. Mr. Kh. Santa, the learned counsel for the petitioner submitted that three minor children were brought forcibly on 27.2.2012 by the respondent from the custody of the petitioner from her residential place Kongba Kshetri Leikai, Imphal East, without her consent and against the wish of the minor children and then left Imphal separating the mother-child relationship inhumane. The learned counsel would submit that after residing for some months at Dimapur, Nagaland and after the incident of rescuing the minor

children by the petitioner from the respondent, the place of residence of the respondent has been shifted and settled at Guwahati keeping three children at the hostel of their respective school at Guwahati.

6. The learned counsel further submitted that the marriage between the petitioner and the respondent was dissolved on 21.7.2015 by the Court of law. However, the incident of taking over the minor children from the custody of the petitioner was made much prior to the passing of the order dated 21.7.2015.

7. The learned counsel for the petitioner urged that the learned Judge of the Family Court erred in observing that the minor children are permanently settled at Guwahati at the time of filing the petition by the petitioner for appointment as guardian of the person. The learned Judge also erred in observing that when the petition was filed by the petitioner, the minors had already been living at Guwahati and the Court at Kamrup District would have jurisdiction to entertain the petition as laid down under Section 9(1) of the Guardians & Wards Act, 1984. The learned Judge also erred in allowing the petition filed by the respondent and returned the petition to the petitioner thereby directing her to present the same before the Court at Kamrup District.

8. According to the learned counsel, the learned Judge ought to have allowed the petition filed by the respondent and the Family Court, Manipur is having territorial jurisdiction over the claim made by the petitioner in Mat. (G&W) Case No.24 of 2015. Thus, a prayer has been made to set aside the order dated 6.8.2016 passed by the learned Judge of the Family Court in Judl. Misc. Case No.64 of 2016. In support, the learned counsel for the petitioner placed reliance upon the following decisions:

- (i) K.C.Sashidhar v. Roopa, AIR 1993 Karnataka 120.
- (ii) Order dated 9.8.2017 passed in MAT App. No.1 of 2017 on the file of the High Court of Manipur.

9. Per contra, Mr. P. Tomcha, the learned counsel for the respondent submitted that on the allegation of threats to the life of the respondent while staying in Manipur, he has been settled at Guwahati and he is not in a position to come to Manipur and appear before the Family Court, Manipur. As such, his counsel, filed Judl. Misc. Case No.64 of 2016 by putting his signature on behalf of the respondent without disclosing the details of the factum of the alleged charges and particulars of persons, if any threats received by him. Taking into consideration that since the minor children are

living with the respondent within Kamrup District and are studying within the territorial jurisdiction of Kamrup District and the respondent is taking care of the minors, the learned Judge rightly came to the conclusion that the minors had already been living at Guwahati and the Family Court, Manipur has no jurisdiction to entertain the case or declaration of guardian of the minors and the learned Judge has rightly ordered return of the petition to the petitioner for presentation before the Court at Kamrup District. Since the order of the learned Judge, Family Court is well considered one, there is no need to interfere with the same and thus, a prayer is made to dismiss the present petition.

10. This Court considered the rival submissions and also perused the materials available on record.

11. The plea of the respondent herein is that due to certain facts in the life of the respondent while living in Manipur, he along with his minor children were compelled to leave Manipur and settle at Guwahati and for the past 10 years, they are residing at Guwahati. According to the respondent, the ordinary place of residence of the respondent and the minors is at Dona Presidency D-1, six Mile V.I.P. Road Chachal, Guwahati, Assam. The said fact has not been disputed by the petitioner.

12. Judl. Misc. Case No.64 of 2016 has been filed by the learned conducting counsel for the respondent based on authorisation given by the respondent and accordingly sworn before the Family Court stating that under Section 9(1) of the Guardian and Wards Act, 1890, if the application is with respect of the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

13. Opposing Judl. Misc. Case No.64 of 2016, the petitioner contended that no document in support of authorisation of the learned counsel to file the petition has been produced and, as such, the conducting counsel has no authority and power to file Judl. Misc. Case No.64 of 2016. The said aspect has been duly considered by the learned Judge and this Court does not wish to interfere with the same.

14. According to the petitioner, while living together at Imphal along with their three minor children, the respondent betrayed the petitioner and left Manipur by taking the three minor children without the consent and knowledge of the petitioner. After a search, the petitioner came to know that the respondent temporarily shifted his place of residence at Guwahati and her minor children are now studying at Guwahati.

15. Drawing this Court's attention to the provisions of Section 6 and 7 of the Guardian and Wards Act, 1890, the learned counsel for the petitioner argued that the petition, namely Mat. (G&W) Case No.24 of 2015 filed by the petitioner is well maintainable before the Family Court and the learned Judge, Family Court, ought not to have allowed the prayer of the respondent in Judl. Misc. Case No.64 of 2016.

16. As rightly held by the learned Judge, Family Court, the respondent never raised any objection regarding the jurisdiction of Family Court to entertain the proceeding in relation to guardianship of the person or custody of the minor. In view of the above, this Court is of the view that there is no need to further elaborate upon the issue qua jurisdiction of the Family Court.

17. The marriage between the petitioner and the respondent was dissolved by a decree of divorce on 21.7.2015. The forcible taking of the minor children alleged by the petitioner is on 27.2.2012. If really, the respondent without the consent of the petitioner took the minor children with him and is residing somewhere away from Manipur, the petitioner would have raised an objection about the forcible custody of the minor children by the respondent. Admittedly, in the case on hand, the petitioner has not raised any such objection at the relevant point of time. In fact, while

delivering the order in Mat. (Divorce) Suit No.59 of 2012, the learned Judge of Family Court, extracted the terms and conditions arrived at between the parties and the same reads thus:

“1. The petitioner and the respondent mutually agreed to dissolve their marriage which was performed on 3.11.1999 by a decree of divorce.

2. The petitioner Ramesh Kumar Gupta agreed to pay a sum of Rs.5,00,000/- (Rupees five lacs) only to his wife, the respondent, Smt. Telem Robita Devi as her permanent alimony in respect of the dissolution of their marriage and the respondent also had no objection to receive the said amount of alimony at the time of dissolution of their marriage.

3. The respondent agreed that she will not claim any amount of her maintenance allowance and any other movable/immovable property/properties from the petitioner after the dissolution of the marriage.”

18. Admittedly, the terms and conditions of the mutual agreement are silent about the custody of the minor children, which implied that the minor children are in the custody of the respondent father at time of arriving at settlement. Therefore, it cannot be contended that against the wishes of the minors, the respondent took them forcibly from the custody of the petitioner mother and is

living at Guwahati. Further, the said aspect is not a matter of discussion in the present petition. Since the petitioner has raised the plea that the respondent has taken the minors forcibly from her custody, this Court discussed the same in this order. This will not in any way affect the merits of Mat. (G&W) Case No.24 of 2015.

19. The point that arises for consideration in the present petition is whether the Family Court, Manipur has jurisdiction to entertain Mat. (G&W) Case No.24 of 2015 or to return it to the petitioner for presentation before the Court at Kamrup District where the minor children ordinarily resides.

20. There is no dispute qua the power of the Family Court to entertain the case relating to declaration of the guardianship of the minor.

21. According to the petitioner, the Family Court, Manipur has jurisdiction to try Mat. (G&W) Case No.24 of 2015 filed by the petitioner. According to the petitioner, the Court at the place of residence of mother would have jurisdiction to try suit. In support, the learned counsel placed reliance upon the decision of the Karnataka High Court in the case of *K.C.Sashidhar*, supra, wherein the Karnataka High Court held thus:

“5. In the instant case, since the child is of tender age, the legal guardian would be the mother and the place of her residence, on the date of the presentation of the petition, is the place where it is to be construed as the minor ordinarily resided” and as such the finding arrived at by the Court-below does not suffer from any legal infirmities. Hence, the circumstances do not warrant interference of this Court in exercise of its power under S.115 of the C.P.C. Accordingly, this C.R.P. is dismissed. No costs.”

22. On a thorough reading of the judgment of the Karnataka High Court, this Court is of the view that the factual aspects involved in the said case are entirely different from that of the instant case. Therefore, decision of the Karnataka High Court relied upon by the petitioner is not helpful to the case of the petitioner as on the date of presentation of Mat. (G&W) Case No.24 of 2015, the minors are residing away from the petitioner. In fact, in paragraph 5 of her petition, namely Mat. (G&W) Case No.24 of 2015, the petitioner averred that *“the respondent instead of bringing her three children to her custody, left Imphal on the same day and later on learnt that the respondent was staying at Dimapur along with her three children”*. Subsequently, in the objection filed in Judl. Misc. Case No.64 of 2016, the petitioner has stated that *“presently, the respondent has been residing at his present temporary place of*

residence at Guwahati". The aforesaid averments of the petitioner would clearly indicate that the minor children are residing with their father at Guwahati. In view of the above, the Court at Kamrup District would have jurisdiction to entertain the petition of the petitioner".

23. The learned counsel for the petitioner, by placing reliance upon the order dated 9.8.2017 of this Court passed in MAT App. No.1 of 2017, submitted that without conducting any enquiry, the learned Judge, Family Court, Manipur allowed the prayer of the respondent. As stated supra, since the petitioner herself admitted that now the minors are residing along with the respondent at Guwahati, the order in MAT App. No.1 of 2017, dated 9.8.2017 is not helpful to the case of the petitioner.

24. It is admitted by the parties that, now the minors are aged 22 years and 17 years respectively. Therefore, this Court is of the considered view that the learned Judge, Family Court, Manipur, was right in allowing the prayer of the respondent in Judl. Misc. Case No.64 of 2016 and, as such, rightly ordered to return the petition of the petitioner, namely Mat. (G&W) Case No.24 of 2015, to present the same before the Court at Kamrup District having appropriate jurisdiction. The said direction of the learned Judge, Family Court cannot be find faulted. No valid grounds have been

made out to interfere with the impugned order of the learned Judge,
Family Court, Manipur.

25. In the result,

- (i) RP (FAM.C.T.) No.2 of 2016 is dismissed.
- (ii) No costs.

JUDGE

FR/NFR

Sushil