

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A_

CRP No.85 of 2024

Sri Sujoy Paul, son of late Subodh Chandra Paul, residence of Vivekananda Palli, West Taranagar, P.S.- Sidhai, Tripura West, Pin-799211.

..... *Petitioner(s)*

V E R S U S

Sri Niranjana Paul, son of late Manindra Paul, residence of Rangotia, P.O. Bamutia, P.S. Lefunga, Tripura (W).

..... *Respondent(s)*

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Kawsik Nath, Advocate,
Ms. S. Deb Barman, Advocate.

For Respondent(s) : Mr. H.K. Bhowmik, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of Judgment & Order : 11th December, 2024

Whether Fit for Reporting: YES / NO

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Kawsik Nath, learned counsel and Ms. S. Deb Barman, learned counsel appearing for the petitioner and also heard Mr. H.K. Bhowmik, learned counsel appearing for the respondent.

[2] The maternal grandfather/respondent herein of the minor son of his daughter and the present petitioner, aged 4(four) years, instituted Misc. (Guardianship) No.27 of 2022 [T.S.(G.C.) No.02 of 2023] under Sections 8 & 10 of the Guardians and Wards Act, 1890 read with Section 7(1)(g) of the Family Courts Act, 1984 before the Court of learned District Judge, West Tripura, Agartala for not only the custody of the minor child but also for devolution of the property of the minor and for treating himself as the guardian of the minor. The daughter of the respondent died on 28.06.2022. The father of the minor, i.e. the petitioner herein also instituted Civil Misc.

(G.C.) No.08 of 2024 before the Court of learned Family Judge, Agartala, West Tripura for custody of the minor son as his natural guardian in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956. He also objected to maintainability of the guardianship case before the Court of learned District Judge in view of the overriding effect of Section 20 of the Family Courts Act, 1984 and Section 7(1)(g) of the Act which provides exclusive jurisdiction to the Family Court in suit or proceedings in relation to the guardianship of the person or the custody of, or access to, any minor. By the impugned order dated 11.03.2024, the learned District Judge, West Tripura, Agartala ruled against the petitioner-father and held the suit maintainable before the Court of learned District Judge. Being aggrieved, the petitioner-father has approached this Court under Article 227 of the Constitution of India.

[3] Upon notice, the respondent-maternal grandfather of the minor son of the deceased Prativa Pal and the present petitioner-husband Sri Sujoy Pal has appeared. On the previous date, learned counsel for the parties took time to assist the Court on the legal issues involved in the present matter as reflected in the order dated 07.09.2024, the gist of which has been captured hereinabove.

[4] Mr. P. Roy Barman, learned senior counsel assisted by Mr. Kawsik Nath and Ms. S. Deb Barman, learned counsel appearing for the petitioner, submits that the learned District Judge has failed to consider the jurisdiction of the Family Court under Section 7(1)(g) of the Family Courts Act, 1984 and the overriding effect under Section 20 thereof

notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The Family Courts Act, 1984 being the later Act, the legislature, i.e. the Parliament was conscious of the existing provisions under the Guardians and Wards Act, 1890. Despite thereof, an overriding effect has been given to the provisions of the Family Courts Act, 1984. Therefore, the proceedings before the Court of learned District Judge, West Tripura, Agartala would be without jurisdiction. Learned senior counsel for the petitioner has placed reliance upon the decision of Kerala High Court in case of *K.S. Narayana Elayathu versus Sandhya* dated 22nd December, 2021 passed in MFA No.150 of 2021. Reference is also made to a decision of the Bombay High Court in case of *Girish J Bobade versus Ajay Thakur and others* in Guardianship Petition No.21 of 2005 dated 22.12.2005.

[5] Learned counsel for both the parties submit that though there is no direct judgment on this issue but in view of the overriding provisions of Section 20 of the Family Courts Act, 1984 and specifically Section 7(1)(g) of the same Act, it is the Family Court which has exclusive jurisdiction to try suit or proceedings in relation to the guardianship of the person or the custody of, or access to, any minor.

[6] Mr. H.K. Bhowmik, learned counsel for the respondent has referred to the decision of the *Rajasthan High Court* reported in (2004) *Legal Eagle (Raj)* 300 dated 19.07.2004 which has relied upon Section 14 of the Guardians and Wards Act, 1890 whereunder the High Court has the power to determine in which of the courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had in

case there are simultaneous proceedings in different courts. Learned counsel for the respondent submits that in view of the legal position that the learned Family Court has exclusive jurisdiction to try suit or proceedings in relation to guardianship of the person or the custody of, or access to, any minor, he would not press the prayer for devolution of the property of the minor which is the subject matter of the Misc.(Guardianship) No.27 of 2022 [T.S.(G.C.) No.02 of 2023] instituted under Sections 8 & 10 of the Guardians and Wards Act, 1890 read with Section 7(1)(g) of the Family Courts Act, 1984 before the Court of learned District Judge, West Tripura, Agartala. He would pray that the guardianship case instituted by the respondent be transferred to Family Court, Agartala and be heard and decided with the guardianship case bearing Civil Misc.(G.C.) No.08 of 2024 instituted by the petitioner-father before the learned Court of Family Judge, Agartala, West Tripura for custody of the same minor son in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956.

[7] Mr. P. Roy Barman, learned senior counsel for the petitioner agrees to the said proposal.

[8] I have considered the submissions of learned counsel for the parties. The legal issue posed before this Court raised a conundrum which could be resolved effectively in the only possible way that the claim for guardianship of property of the minor by the maternal grandfather be segregated from the claim of guardianship since in view of the overriding effect of Section 20 of the Family Courts Act, 1984, on the one hand the suit or proceedings for guardianship of the person or the custody of,

or access to, any minor lies within the exclusive jurisdiction of the Family Court, the Family Court at the same time cannot assume jurisdiction in respect of a claim for guardianship of property of such minor as no such power has been vested to the said Court. On the other hand, Section 7 of the Guardians and Wards Act, 1890 contains the power of the Court to make order as to guardianship where it is satisfied that for welfare of a minor an order should be made (a) appointing a guardian of his person or property, or both or (b) declaring a person to be such a guardian. Sub-section (2) provides that an order made under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

[9] Section 8 provides the category of persons who are entitled to apply for such order, i.e. (a) the person desirous of being, or claiming to be, the guardian of the minor, or (b) any relative or friend of the minor or (c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property or (d) the Collector having authority with respect to the class to which the minor belongs.

[10] Section 9 provides the jurisdiction of the District Court in the place where the minor ordinarily resides with respect to the guardianship of the property of the minor. Sub-section (2) thereof provides that if the application is made with respect to the guardianship of the property of the minor, it may either be made to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property. Sub-section (3) provides that if

an application is made with respect to the guardianship of the property of a minor to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

[11] From a plain reading of the aforesaid provisions, it is but apparent that under the Act of 1890 the District Court has the power to appoint a guardian of the minor or his property or both. However, since the Family Courts Act is a later enactment, it can be presumed that the Parliament being conscious of the existing provisions chose to provide the overriding clause under Section 20 of the Family Courts Act, 1984 conferring exclusive jurisdiction upon the Family Court to try a suit or proceeding in relation to the guardianship of a person or the custody of, or access to, any minor. However, the legislature consciously did not confer any power as regards the guardianship of the property of such person or minor. In such circumstances, the composite suit which has been instituted by the respondent-maternal grandfather, both for guardianship of the minor and his property cannot be tried by the Family Court in such form.

[12] Therefore, learned counsel for the respondent has fairly submitted that the respondent does not press the cause of action and relief relating to guardianship of the property of the minor for the time being. It is also pointed out that in such circumstances this Court under Section 14 of the Act of 1890 has the jurisdiction to transfer a suit of guardianship from one Court to another if simultaneous proceedings are initiated. Apart from

that, in the above circumstances, this Court has the general power under Section 24(1)(b) of the Civil Procedure Code to withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and (i) try or dispose of the same; or (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn. The District Court and the Family Court at Agartala being subordinate to this Court, I therefore, deem it proper to withdraw Misc.(Guardianship) No.27 of 2022 [T.S.(G.C.) No.02 of 2023] instituted by the respondent-maternal grandfather from the Court of learned District Judge, West Tripura, Agartala and transfer it to the learned Family Court, West Tripura, Agartala for trial and disposal.

[13] It is ordered accordingly.

[14] Since the petitioner-father has also instituted Civil Misc.(G.C.) No.08 of 2024 for custody of the minor as his natural guardian under Section 6 of the Hindu Minority and Guardianship Act, 1956 before the learned Family Court, Agartala, both the suits be tried together. The learned Family Court would proceed in the suit so transferred from the stage at which it was pending before the learned District Judge, West Tripura, Agartala, however, only in respect of the cause of action and relief relating to guardianship of the minor and not guardianship of the property of the minor. The respondent-maternal grandfather will not be at liberty to raise his cause of action in respect to guardianship of the property of the minor in a separate proceeding, in accordance with law, after disposal of the instant guardianship case.

[15] In view of the facts and circumstances noted above, the reasons recorded and the directions passed, the impugned order dated 11.03.2024 passed by the learned District Judge, West Tripura, Agartala in T.S.(G.C.) No.02 of 2023 is set aside.

[16] The instant civil revision petition stands disposed of.
Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH) CJ

DIPESH DEB

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