

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.228 OF 2014

1. Shri Ramnivas Ganpatlal Sharma,
Age 65 years, Occu. Nil.
2. Sau. Santrabai Ramnivas Sharma,
Age 55 years, Occu. Household,
3. Shri Mahendra Ramnivas Sharma,
Age 40 years, Occu. Furniture Work
4. Sau. Anita Gaurao Sharma,
Age 36 years, Occu. Household
5. Kum. Jatin Suresh Sharma,
(Grandson of Petitioner No.1)
Age 9 years, Occu. Education

Petitioner No.1 to 5 Resident of :
368-H, Kalani Nagar, Aerodrome
Road, Indore, Tahsil District Indore
(Madhya Pradesh)

... APPLICANTS
(Original Non-Applicants)

VERSUS

1. Smt. Shakuntalabai Bansilal Sharma,
Age 55 years, Occu. Household,
2. Shri Rakesh Bansilal Sharma,
Age 38 years, Occu. Service.
3. Shri Naresh Bansilal Sharma,
Age 36 years, Occu. Advocate.

All R/o 27, Adarsh Nagar, Shirpur,
Taluka Shirpur, District Dhule; and
Plot No.21, Piteshwar Colony,
Shirpur, Taluka Shirpur,
District Dhule.

... RESPONDENTS
(Original Applicants)

.....
Shri Anand Chaware, Advocate for applicants
Shri S.P. Shah, Advocate for respondents
....

CORAM: A.I.S. CHEEMA, J.

DATED: 5th March, 2015.

Date of reserving judgment : 24/2/2015

Date of pronouncing judgment : 5/3/2015

JUDGMENT :

1. Petitioners are original non-applicants in Civil M.A. No.59/2013, pending before District Judge, Dhule. I will refer to them as non-applicants, the way they have been arrayed in the Civil Misc. Application. Present respondents – original applicants have filed the Misc. Application seeking declaration of guardianship and custody of minor Jatin Suresh Sharma, original respondent No.5. I will refer to the minor as Jatin. Original applicant Shakuntalabai is grandmother and original applicant Rakesh and Naresh are the uncles of the minor Jatin. Non-applicant No.1 Ramnivas and respondent No.2 Santrabai are the parents of non-applicant No.4 Anita, the mother of minor Jatin. Non-applicant No.4 Mahendra is the brother of Anita. The applicants have sought declaration that they are the guardians of minor Jatin and sought his custody

in the original application before the District Judge. Non-applicant No.4 mother Anita filed application under Order VII Rule 11 of the Code of Civil Procedure, 1908 read with Section 9 of the Guardians and Wards Act, 1890 (Act in brief), claiming that, under Section 9 of the Act, the jurisdiction lies with the District Judge of area where the ward resides. She claimed that, for last seven years minor Jatin was residing with her at Indore, District Indore (Madhya Pradesh) as she and the minor had been forced to go by the applicants and as she has no other means. Thus, she claimed that the Court at Dhule did not have jurisdiction. District Judge-1, heard the parties and framed preliminary issue whether non-applicant No.4 (i.e. mother Anita) proved that the District Court at Dhule had no jurisdiction to entertain the main application. The District Judge gave opportunity to the parties to lead evidence. Anita recorded her oral evidence. District Judge heard the arguments and recording reasons, came to the conclusion that the ordinary place of residence of the minor Jatin was Shirpur in Dhule district and thus, held that the Court had jurisdiction.

2. The revision petitioners – original non-applicants have filed this revision challenging the said order dated

7.11.2014. It is claimed and also argued that the question was not whether Indore had jurisdiction but the question was whether jurisdiction lay at Dhule; the pleadings of the original applicants itself showed that the minor was residing with his grandparents at Indore and thus, it was clear that there was no jurisdiction at Dhule; the District Court wrongly read the evidence to hold that Anita was residing at Nashirabad, District Ajmer in Rajasthan and not at Indore and that the impugned orders passed were not legally maintainable. The learned counsel submitted that, the petitioners did not spell out that minor was residing in the jurisdiction at Dhule. On the day when the petition was filed, admittedly the minor was residing at Indore. According to him, the ordinary place of the minor would be where his mother was residing.

3. Per contra, the learned counsel for original applicants submitted that Anita was married to Suresh Sharma, the son of applicant No.1 Shakuntalabai and Jatin was born out of the wedlock at Shirpur and he was taking education at Shirpur. Suresh Sharma died in accident on 29.12.2008. Anita re-married with one Gaurao Sharma and has gone to reside at Nashirabad, District Ajmer in Rajasthan and according to the counsel, the minor Jatin was taken along by her, stating that they were going for vacation and she left Jatin at the place of her parents and

thereafter the minor had not been allowed to come back. Even his School Leaving Certificate was not taken from Shirpur and in an unlawful manner, the minor was got admitted in a school at Indore. The counsel submitted that, there was evidence to show that there was arrangement between Anita and her new husband wherein she had agreed that the minor will not stay with them. Thus, according to him, the child has been taken away wrongly from ordinary place of residence and the Court at Dhule has the jurisdiction. He relied on the case of In Re. Dr. Giovanni Marco Muzzu, reported in [1983 Mh.L.J. 607] and the case of Bhagyalakshmi and another Vs. K. Narayana Rao, reported in AIR 1983 Madras 9 to submit that the ordinary place of residence as contemplated under Section 9 of the Act does not include places where the minor may be staying temporarily or he is in transit or where the minor has been forcibly removed.

4. Point for consideration is :-

Whether the Court at Dhule has jurisdiction to entertain the Civil M.A. No.59/2013 ?

5. Section 9 of the Act needs to be reproduced. It reads as under :

9. Courts having jurisdiction to entertain application:

(1) If the application is with respect to 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.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either 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.

(3) If an application with respect to the guardianship of the property of a minor is made 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."

6. Original applicants filed the Misc. Application claiming guardianship of the minor. Reference was made to the marriage of Anita with son of applicant Shakuntalabai and unfortunate death of Suresh Sharma on 29.12.2008. Reference was made to the second marriage of Anita taking place and acceptance of Anita to leave the minor with the applicants before Samaj Panchas. There are pleadings that Anita, as per the agreement before the Panchas, did not reach minor Jatin to the native place at Shirpur and when her new in-laws did not keep the minor Jatin, he has been left at the place of her parents. The pleadings claimed that, Anita, on false assurance that she will bring back the minor to Shirpur, took him to Indore although the minor Jatin

is permanent resident of Shirpur. On the basis of such pleadings, the original applicants claimed that the Court at Dhule had jurisdiction.

7. Original non-applicant No.4 Anita raised the question of jurisdiction and the District Judge put the burden on her to show that the Court has no jurisdiction, as the pleadings in the application, prima facie disclosed jurisdiction at Dhule. As the respondent No.4 questioned the same, District Judge put the burden on her to show that Dhule Court had no jurisdiction. Respondent Anita brought on record her evidence. Although the applicants did not separately lead evidence, still there is no reason why they cannot rely on the evidence of respondent No.4 Anita herself in this regard.

8. If the impugned order is perused and read along with the oral evidence of the respondent No.4 Anita, it can be seen that the District Judge, after he was apprised of the law on the subject regarding ordinary residence, observed that Anita claimed that Jatin was residing with her at Indore since birth and she further claimed that Jatin was residing at Indore since 2010 and that her in-laws had driven her out of the house in 2010. She relied on Exhibits 26 to 28 to show that her son had been admitted in "Kids College" at Indore. District Judge considered

the evidence that respondent No.4 had performed second marriage with one Gaurao on 28.6.2012. She had deposed in her evidence that she had received notice sent by Advocate at the address of her new in-laws at Ajmer in Rajasthan. Even the notice of the main petition pending before the District Judge was received by her at the address at Ajmer (Rajasthan). Nashirabad is in Ajmer district. Anita admitted that Jatin was born and brought up at Shirpur and took education till IInd Standard at Shirpur while residing with her along with petitioners at Shirpur. She admitted that, Jatin had taken admission in Junior K.G. in 2007-08 at Shirpur. He took education of Senior K.G. at Shirpur in 2008-09. He completed Ist Standard at Shirpur. Anita further admitted that her son had taken education in IInd Standard in the month of April 2011 at Shirpur. District Judge considered her evidence that she admitted that earlier her husband was bearing expenses of education of Jatin till his death and thereafter the original petitioners had borne the expenses of education of Jatin at Shirpur. She admitted in cross-examination that till completing the examination of IInd Standard, she was residing at Shirpur. District Judge considered the admissions that there was no immovable properties of her's or in the name of her husband at Indore. The new in-laws were residing at Nashirabad. She claimed that, ration card of her husband may be at Nashirabad. She accepted that name of Jatin was not

mentioned in the said ration card. District Judge further considered her evidence where she admitted that for her son Jatin the admission taken in "Kids College", Indore was by showing his earlier school as Bharat Bal Vinay Mandir although Jatin had never studied there. District Judge found that she had succeeded in getting admission of her son in the said school by preparing false documents. District Judge also noticed that respondent No.4 had not produced any documentary evidence showing her address at Indore. He found that she was residing with her husband at Nashirabad. Discussing all such evidence, the District Judge concluded that the respondent No.4 Anita was not residing at Indore and that she was residing at the place of her second husband. He then concluded that the ordinary place of residence of the minor could not be treated as at Indore. Considering the evidence of mother Anita, District Judge found that minor Jatin was residing along with petitioners at Shirpur and he had been taken away to Indore and by such act itself, the Court at Dhule will not lose jurisdiction. According to the District Judge, the ordinary place of residence of minor Jatin at Shirpur would not change only because some times the mother was residing at Indore and some times at Nashirabad. For such reasons, District Judge found that he had the jurisdiction.

9. In the matter of "Bhagyalakshmi" (supra) relied on

by the learned counsel for original applicants, in para 7, it was observed as under :

“The words 'ordinarily resides' would in my view cannot, a regular, normal or settled home and not a temporary or forced one to which a minor might have been removed either by stealth or by compulsion. The place of residence at the time of the filing of the application under the Act does not help to ascertain whether a particular court has jurisdiction to entertain the proceedings or not, as it would be easy to stifle proceedings under the provisions of the Act by the mere act of the moving the minors from one place to another and consequently from one jurisdiction to another. The question whether the minors were ordinarily residing in any particular place has to be primarily decided on the facts of the particular case. The paternal family house of the family residence may normally be taken to be the place of ordinary residence of the minors as well. The words 'ordinarily resides' are incapable of any exhaustive definition as those words have to be construed according to the purpose for which the enquiry is made. The intention of not reverting back to the former place of residence would normally be relevant; but in the case of minors, it is rather difficult to impute any such intention to them. It has also to be borne in mind that mere temporary residence or residence by compulsion at a place however long, cannot be equated to or treated as the place of ordinary residence. Bearing in mind these considerations, it is necessary to ascertain from the materials available in this case as to where the minors 'ordinarily resided' for purpose of the Act.”

10. Keeping the above in view, if the analysis of the evidence available and reasonings recorded by the District Judge are perused, it cannot be said that there is anything illegal in the findings recorded by the District Judge. Considering the

pleadings of the original applicants, jurisdiction of the Court at Dhule was prima facie spelt out by the original applicants. Respondent No.4 Anita wanted to question the jurisdiction and led her evidence. However, the evidence rather brought on record the fact that Jatin was not only born at Shirpur in the paternal family but had also taken education in the school at Shirpur till April 2011. Although Anita deposed in her examination-in-chief that her son was residing with her at Indore since 2010, the cross-examination brought on record admissions that she was residing at Shirpur with her son Jatin till May 2011 when Jatin cleared the Second Standard. Her cross-examination brought on record the fact that without taking transfer certificate from the school at Shirpur she had managed to get an admission for Jatin at Indore. What appears from record is that, her parents are residing at Indore. Her cross-examination shows that it was correct to say that Gaurao, the second husband has performed marriage with her on condition that Jatin will not stay with them. Details brought in the cross-examination show that her second husband has business and residence at Nashirabad and there is no property of the husband at Indore. It is apparent that she took the minor Jatin along with her after April 2011 and the minor has been left at the place of her parents while she is residing at Nashirabad with her second husband in an arrangement that the minor cannot stay with her at Nashirabad.

This is sad. Had it been a case where after the death of husband mother remarries and takes the minor with her to stay in the new home, one could have considered the intention to shift the ordinary place of residence for minor. But in the present set of facts, it is more a case of leaving the minor at the place of her parents by the mother, who is staying with her new in-laws after shifting the minor from his ordinary place of residence where he was born and brought up till recent times of April 2011. Learned counsel for the original applicants rightly relied on the admissions in cross-examination of Anita that without applying for getting school leaving certificate of Jatin from D.C. Patel School at Shirpur she had managed to get him admitted at Indore relying on false documents and such evidence showed that the minor had been stealthily taken away from the guardianship of the paternal family.

11. In the present matter, the minor who was born and brought up at Shirpur, was residing at his native place Shirpur which was his ordinary residence. His stay at Shirpur till April 2011 was continuous. Some time thereafter his mother Anita took him to Indore and while she entered into second marriage on 28.6.2002 and herself settled at Nashirabad in Ajmer District (Rajasthan), she left the minor at Indore with her parents. Had it been a case that the minor was residing with her in the new

home at Nashirabad in Rajasthan, the intention to shift ordinary residence of the minor with the mother could have been assumed. However, as the minor is not residing with her at Nashirabad and has been taken away in questionable circumstances from paternal family at Shirpur and kept at Indore, the ordinary residence of Shirpur of the minor will not change.

12. For such reasons, I do not find that the judgment and order of the District Judge can be said to be illegal or suffering from material irregularity. The District Judge rightly found that the Court at Dhule had the jurisdiction.

13. There is no substance in the revision application. The same is rejected.

14. The observations made in this judgment relating to facts are limited for the appreciation of question of jurisdiction and shall not weigh while deciding the original application on its merits regarding the claim of guardianship.

(A.I.S. CHEEMA, J.)