

In the High Court of Punjab and Haryana at Chandigarh

T.A. No. 28 of 2016

Date of Decision: February 25, 2016

Bandana and another

... Applicants

Versus

Amrik Singh and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

Present: Mr. Ramneek Vasudeva, Advocate,
for the applicants.

Mr. Sandeep Bansal, Advocate,
for the respondents.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant application has been filed under Section 24 of the Code of Civil Procedure for transfer of petition filed by the respondents, under the provisions of the Hindu Minority & Guardianship Act, 1956, titled “Amrik Singh and another vs. Bandana and another”, pending in the Court of learned Additional Civil Judge (Senior Division), Hoshiarpur to the court of competent jurisdiction at Bathinda.

I have heard learned counsel for the parties.

Learned counsel for the applicants contends that respondents filed a petition under the provisions of the Hindu Minority & Guardianship Act, being grandparents, seeking guardianship of minor children, which is pending before the learned Additional Civil Judge (Senior Division), Hoshiarpur. Learned counsel further contends that minor children, namely, Amrinder Singh, whose date of birth is 19.10.2005 and Deepak Katnauria, whose date of birth is 06.04.2007, are residing with the applicants in the

territorial jurisdiction of District Bathinda and also studying in Sri Guru Harikrishan Public School, Bathinda. Applicant No.1 being the mother, is natural guardian of the children. Learned counsel further contends that other proceedings under Section 406 IPC are also pending at Bathinda.

On the other hand, learned counsel for the respondents vehemently contends that the minor children at the time of filing of the petition under the provisions of Hindu Minority & Guardianship Act, were residing at the territorial jurisdiction of Hoshiarpur and were studying in Woodland Convent School, at Hoshiarpur. Learned counsel made reference to Section 5 of the Hindu Minority & Guardianship Act. The petition seeking guardianship of the children is not required to be transferred.

I have considered the contentions raised by learned counsel for the parties and perused the record.

The paramount consideration is always the welfare of the children. The children are residing with the natural guardian i.e. applicant no.1 and are already studying at Bathinda.

Section 9 of the Guardians and Wards Act, 1890 reads as under:-

- “9. Court 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.”

Hon'ble Supreme Court in **Ruchi Majoo vs. Sanjeev Majoo**, **AIR 2011 SC 1952**, has held that the solitary test for determining the jurisdiction of the Court under Section 9 of the Act is the ordinary place of residence of the minor.

Since, the children are residing with the applicants at Bathinda and in view of the fact that the respondents being grandparents of the minor children have only visiting rights and in view of Section 9 of the Act and keeping in view the decision of Hon'ble Supreme Court in **Ruchi Majoo (supra)**, petition under the provisions of Hindu Minority and Guardianship Act filed by the respondents titled “Amrik Singh and another vs. Bandana and another”, pending in the Court of learned Addl. Civil Judge (Senior Division), Hoshiarpur is withdrawn and ordered to be transferred to learned District Judge, Bathinda, who may assign the same to the Court of competent jurisdiction there. Learned Addl. Civil Judge (Senior Division), Hoshiarpur shall ensure that entire record of the case is sent to learned District Judge, Bathinda.

Parties are directed to appear before the Court of learned District Judge, Bathinda on 15.03.2016.

Disposed of.

February 25, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge