

In the High Court of Punjab and Haryana at Chandigarh

**T.A. No. 709 of 2015
Date of Decision: March 02, 2016**

Kanwaljit Kaur

... Applicant

Versus

Balwinder Singh

... Respondent

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

Present: Mr. Sarju Puri, Advocate,
for the applicant.

Mr. Munish Gupta, Advocate,
for the respondent.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant application has been filed under Section 24 of the Code of Civil Procedure, 1908 for transfer of petition bearing No.GW/12/15, under Sections 7 and 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as the "Act) read with Section 6 of the Minority and Guardianship Act, 1956, filed by the respondent, titled "Balwinder Singh vs. Kanwaljit Kaur", pending in the Court of learned Additional Civil Judge (Senior Division), Hoshiarpur to the court of competent jurisdiction at Shaheed Bhagat Singh Nagar.

I have heard learned counsel for the parties.

Learned counsel for the applicants contends that the respondent filed a petition under Sections 7 and 25 of the Act, seeking custody of three children, which is pending before the learned Additional Civil Judge

(Senior Division), Hoshiarpur. Learned counsel further contends that children, namely, Simranjit Kaur, whose date of birth is 10.12.1995, Bimal Bhatoa, whose date of birth is 03.04.1997 and Lakhvir Singh, whose date of birth is 26.06.2003 are residing with the applicant in the territorial jurisdiction of District Shaheed Bhagat Singh Nagar. Applicant being the mother, is natural guardian of the children. Learned counsel further contends that the petition under Section 125 of the Code of Criminal Procedure and application under the provisions of Protection of Women from Domestic Violence Act, 2005 filed by the applicant, are pending against the respondent at Shaheed Bhagat Singh Nagar.

Per contra, learned counsel for the respondent vehemently opposes the contentions raised by learned counsel for the applicant.

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 at Shaheed Bhagat Singh Nagar.

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, 2011, AIR (SCW) 3311**, 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 applicant at Shaheed Bhagat Singh Nagar 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 Sections 7 and 25 of the Act filed by the respondent titled “Balwinder Singh vs. Kanwaljit Kaur”, pending in the Court of learned Addl. Civil Judge (Senior Division), Hoshiarpur is withdrawn and ordered to be transferred to learned District Judge, Shaheed Bhagat Singh Nagar, 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, Shaheed Bhagat Singh Nagar.

Parties are directed to appear before the Court of learned District Judge, Shaheed Bhagat Singh Nagar on 21.03.2016.

Disposed of.

March 02, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge