

THE HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CIVIL REVISION PETITION No.622 of 2011

ORDER:

This Civil Revision Petition is filed against the orders dated 22.12.2010 passed in an I.A.No.1187 of 2010 in O.P.No.654 of 2009 by the Judge, Family Court, Ranga Reddy District in the petition. The Interlocutory Application in the I.A.No.1187 of 2010 was filed by the respondent in O.P.No.654 of 2009, who is the grand father of the minor child for whose custody the battle is being fought. It is the averment of the deponent in the affidavit that the District Court/Family Court, Ranga Reddy District at L.B. Nagar, does not have any jurisdiction as the minor child admittedly resides within the jurisdiction of the Courts at Visakhapatnam District, where the respondents in O.P./ grand parents reside. On the other hand, the mother who is the respondent in the I.A. 1187 of 2010 has filed a counter affidavit stating that she is residing at Kukatpalli, Ranga Reddy District within the territorial jurisdiction of the Courts at Ranga Reddy only. She also states that her minor child was taken away from her custody by the grand parents of the minor child. Therefore, she states that the Ranga Reddy Court at L.B.Nagar has the jurisdiction to decide the matter.

This Court has heard Sri A.Krishnam Raju, learned counsel for the petitioner and Sri Ch.Srinivas, learned counsel for the respondents.

It is a fact that as per Section 9 of the Guardians and Wards Act, 1980, the application shall ordinarily be made in the District

Court, having jurisdiction, where the minor child ordinarily resides.

Learned counsel for the petitioner points out that in para-3 of the petition filed in O.P.No.654 of 2009, it is stated that the child is admitted in the Master Mind's Talent School, Visakhapatnam on 12.6.2006. It is also averred that in October, 2006, the grand parents of the child came to her house and took the child promising them to send back the minor child after end of the Dasara Vacations and since then the minor child is "illegally" kept in the custody of the grand parents/respondents in O.P. Therefore, the learned counsel for the petitioner argued that it is clear from this paragraph and also from the particulars provided in page 6 of the petition that the minor child is residing with the respondents at Nakkapally Mandal, Visakhapatnam District. The learned counsel for the petitioner, therefore, argues that it is only the Courts at Visakhapatnam that have the jurisdiction.

Responding to the arguments of learned counsel for the petitioner, learned counsel for the respondents pointed that in the cause title and also in the other applications, it is stated that the mother is the permanent resident of Vivekanandanagar, Kukatpally, Hyderabad. It is also stated in the other applications that the mother of the minor child is residing at Kukatpally, Hyderabad and that the Ranga Reddy Court at L.B.Nagar has jurisdiction to decide the matter.

The learned counsel for the petitioner cited the Judgment in the case of **Dandu Sridhar v. Pothamashetty Padma Priya and others**¹ wherein the Division Bench of High Court of

¹ 2004(1)ALD 840(DB)

Andhra Pradesh held that the place where the ward ordinarily resides has not been defined and the Oxford Dictionary defines that a place where the child resides for a considerable period of time is the ordinary residence of the child. In the case on hand, as can be seen from the application filed, the mother admits that the minor child was admitted in a school in Visakhapatnam on 12.6.2006 and later in October, 2006, the minor child was taken away by the grand parents and that the mother/respondent No.1 is awaiting that the grand parents will bring the child back to the mother. Therefore, it is clear from the averments in the affidavit that the child is in the custody of the grand parents and in fact, page 3 of the application says that several times, the respondent No.1 and her parents went to the house of the petitioner to bring back the son. Therefore, it can be inferred that the ward ordinarily resides with the grand parents and the decision of the Division Bench of the High Court of Andhra Pradesh cited supra clearly applies to the facts and circumstances of the case.

Learned counsel for the petitioner also pointed out that if the child was “illegally” taken away, as is now alleged some action would have been taken in the year 2006 itself. In fact till date, no action has been taken for the so called illegal action, which makes it clear that the child ordinarily resides with the grand parents under the territorial jurisdiction of the Court in Visakhapatnam. Therefore, this Court is of the opinion that the points urged by the petitioner are correct. From 2006 till date, the child is admittedly within the jurisdiction of the Court at Visakhapatnam. The Hon’ble Division Bench defines the

residence of the ward as the place where the ward is living for considerable period of time.

In that view of the matter, the Civil Revision Petition is allowed. It is held that the Ranga Reddy Court situated at L.B. Nagar has no jurisdiction in the matter and so, O.P. No.654 of 2009 shall be transferred to the Family Court, Visakhapatnam, having the territorial jurisdiction over the matter. No order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

JUSTICE D.V.S.S. SOMAYAJULU

Date:27.04.2018
slk



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