

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6401 of 2016 (O&M)

Date of decision:19.11.2018

Manpreet Singh Dhingra

... Petitioner

Vs.

Gunjeet Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Rakesh Bhatia, Advocate
for the respondent.

AMIT RAWAL J.

The petitioner-husband is aggrieved of the impugned order dated 17.09.2016 (Annexure P-8), whereby, an application under Section 9 of the Guardian & Wards Act, 1980 (for short "1980 Act") for rejection of the petition on account of territorial jurisdiction, has been dismissed.

Mr. Veneet Sharma, learned counsel appearing on behalf of the petitioner submitted that out of the marriage performed between the parties on 30.12.2001 at Chandigarh, one daughter Suhavi Kaur was born on 06.02.2005 and a son Kabir Singh on 02.10.2007 at Chandigarh. Annexures P-1 and P-2 are the testimony of the same. They are studying in Delhi Public School, Chandigarh.

Respondent-wife owing to the discord, had left the matrimonial home on 13.04.2014 and after two years, filed a petition under Section 25 of

1980 Act. The provisions of Section 9 of 1980 Act, envisages the jurisdiction of the Court where minor is in the guardianship of the person. Both the children are studying in 4th and 6th class and therefore, petition at Amritsar was not maintainable.

Per contra, Rakesh Bhatia, learned counsel appearing on behalf of the respondent submitted that in fact, the children were forcibly removed from the lawful custody of the respondent-wife on false pretext of getting the children transferred at Amritsar. It has categorically been pleaded that on repeated visits to Chandigarh, children have been apprised by the petitioner-father regarding the atrocities committed by the respondent-mother and in case, the children are allowed to grow in such atmosphere, they would develop deformed personality. In support of the aforementioned contention, relied upon the ratio decidendi culled out by this Court in **CR No.2570 of 2017 titled as M/s Design Boxed and others vs. Manpreet Singh decided on 09.11.2017**, thus, prayed for dismissal of the petition.

I am afraid the aforementioned arguments of Mr. Bhatia, are not sustainable, for, plain and simple reading of the provisions of Section 9 of 1980 Act 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.”

Concededly, the children in the year 2016 at the time of filing of petition, were studying in 4th and 6th class and now they must be in 6th and 8th class. In such circumstances, petition at Amritsar, in view of the aforementioned provisions of law, is not maintainable. It would have been a case where the expression ordinary residing even cannot be construed of conferring the jurisdiction at Amritsar owing to the place of residence of mother. There is no dispute to the ratio decidendi culled out in the aforementioned case but fact of each case has to be examined. The order under challenge is infirm and suffers from illegality and perversity and the same is hereby set aside. The petition under Section 25 of 1980 Act, is returned back to be filed in an appropriate Court.

Revision petition stands allowed.

November 19, 2018

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No