

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7257 of 2018

Date of Decision: 02.11.2018

Tejbir Singh

.....Petitioner

Vs.

Baljit Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Amit Arora, Advocate, for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the Additional Civil Judge (Senior Division), Khadur Sahib, dated 01.11.2018, by which the application of the petitioner-defendant under Order VII Rule 11 CPC, has been dismissed.

Vide the said application, the contention of the petitioner was that the Court at Khadur Sahib did not have jurisdiction to hear the petition filed by the respondent (petitioner before that Court), under Section 25 of the Guardian and Wards Act, 1990 read with Section 10 of the Hindu Minority and Guardianship Act, 1956 and Section 26 of the Hindu Marriage Act, 1955.

Vide the said petition, the respondent herein sought custody of her minor daughter aged 11 months, as also maintenance for the child.

The respondent herein being a resident of a village falling in Tehsil, Khadur Sahib, had instituted the said petition in the Court at Khadur Sahib, with the contention of the petitioner herein (respondent before the trial Court) being that in terms of Section 9 of the Guardians and Wards Act, 1890, the jurisdiction to entertain a suit seeking custody of the minor would be at the place where minor resides, i.e. Tehsil and District Amritsar in this case, which is where the village of

the petitioner is situated.

Section 9 of the aforesaid Act reads as follows:-

“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 of 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 the 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.”

Thus, as per the said Act, the application in respect of the guardianship of the minor is to be made to the District Court having jurisdiction in the place where minor ordinarily reside.

However, this Court (co-ordinate Bench) in **Smt. Sunita Jain and others** vs. **Mittar Sain Jain and another** 2003 (1) RCR (Civil) 440, held that even though the minor children in that case were not residing at Rohtak, where the mother was residing but with the former-in-laws at Bhiwani, they would be deemed to be residing at Rohtak, they being under 05 years of age and therefore, their natural custody would lie with the mother; and consequently, the Court at Rohtak would have jurisdiction to entertain a petition under the Guardians and Wards Act, 1890, despite the children having initially resided at Bhiwani.

In the present case, even as per what has been submitted by learned counsel for the petitioner, the petitioner and the respondent were married to each

other on 13.03.2016, with the daughter having been born thereafter, but with the respondent herein allegedly having withdrawn from the society of the petitioner in September 2017.

In paragraph 5 of the petition filed by the respondent herein (copy Annexure P-2), it has been stated that the custody of the minor child was taken away from the respondent herein (petitioner before the trial Court) on 29.12.2017, from her parental village, Bharowal, Tehsil Khadur Sahib, District Tarn Taran.

That being so, I would respectfully agree with the ratio of the judgment of the co-ordinate Bench of this Court in **Sunita Jains'** case (supra), holding that the custody of a child below 05 years of age (especially a female child), would naturally lie with the mother, and therefore the deemed custody would be with the mother even if actual custody was with the father.

In the present case, the allegation of the respondent herein being that the custody of the child, who is only 11 months old, had been taken away forcibly in December 2017, I see absolutely no error in the impugned order, whereby the Court at Khadur Sahib has dismissed the application under Order VII Rule 11, by which application jurisdiction of that Court had been challenged.

Consequently, this petition is dismissed.

However, nothing stated hereinabove shall be taken to be a comment on the merits of the case for or against the petitioner, which would be gone into by the trial Court wholly on the basis of evidence led by the parties.

November 02, 2018

nitin/dinesh

Whether speaking/reasoned

Whether Reportable

(AMOL RATTAN SINGH)

JUDGE

Yes

No