

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1096 of 2019**

1. Prem Kumar Singh, Son of Late Jaylal Singh, Resident of Mohalla-Pokharia Peer, Post Office-Ramna, Police Station and District-Muzaffarpur.
2. Anju Rani, W/o Prem Kumar Singh, Resident of Mohalla-Pokharia Peer, Post Office-Ramna, Police Station and District-Muzaffarpur.

... .. Petitioners

Versus

Dhananjay Singh, Son of Shiv Narayan Singh, Resident of Village-Lakhnipur Maheshpatti, Police Station-Ujiarpur, District-Samastipur.

... .. Respondents-Opposite Party

Appearance :

For the Petitioner	:	Mr.Alok Kumar Alok, Advocate
For the Respondent	:	Mr. Surendra Kishore Thakur, Advocate

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 29-08-2019

This application under Article 227 of the Constitution of India has been filed by the petitioners challenging the order dated 28.02.2019 passed by the learned Principal Judge, Family Court, Samastipur in Guardian Case No.8 of 2017 whereby the objection raised by the petitioners in respect of territorial jurisdiction of the Family Court, Samastipur has been overruled and the court below has held that it has jurisdiction to hear the issue and decide the case.

2. Learned counsel appearing for the petitioners submitted that the court below has erred in law as also on facts. It has failed to appreciate that it had no territorial jurisdiction to decide the issue of the minor son of the opposite party. It has also



failed to appreciate that the minor child was in the custody of maternal grandfather and maternal grandmother who were residing at Muzaffarpur. Hence, even if the Family Court had any jurisdiction, it was the court at Muzaffarpur and not at Samastipur, which could have entertained the application and decided the case. He has further contended that since the wife of the opposite party is no more and the minor son of the opposite party is in custody of maternal grand parents, under no circumstance, the Family Court could have entertained the application.

3. *Per contra*, learned counsel appearing for the opposite party submitted that the objection raised by the petitioners in respect of the territorial jurisdiction of the Family Court at Samastipur are totally misconceived. The opposite party being father of the minor son is the natural guardian of the child. Since his wife has already died, it is he alone, who is entitled to the custody of his minor son. Since the opposite party is posted at Samastipur, the Family Court at Samastipur is fully competent to decide the issue of custody of his child. He pleaded that the court below has rightly appreciated the facts and law involved in the case and the order impugned dated 28.02.2019 does not suffer from any illegality or irregularity.



4. Having heard learned counsel for the parties and carefully perused the record, I find substance in the submission of the learned counsel for the opposite party.

5. It is an admitted fact that the petitioner's daughter was married to the opposite party. Out of the wedlock, a son was born on 09.04.2015. At the time of delivery, unfortunately, the wife of the opposite party died in Paras Hospital at Patna. At that time, the respondent allowed his in-laws to take the child to their home so that they may take care of him in absence of the mother. Subsequently, the respondent being in government service and posted at Samastipur wanted custody of his son. Since the maternal grant-parents of the child were not ready to hand over the custody of the child to the opposite party, he filed Guardianship Case No.8 of 2017 in the court of Principal Judge, Family Court, Samastipur.

6. After notice, the petitioners appeared before the Family Court, Samastipur and filed their written statement. They raised a preliminary objection regarding the territorial jurisdiction of the Court. After hearing the parties, the Family Court overruled the objection raised by the petitioners and held that it has jurisdiction to decide the case vide impugned order dated 28.02.2019.



7. The said order dated 28.02.2019 is under challenge in the present application.

8. The laws governing child custody in India are the Guardianship and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956.

9. The Supreme Court consistently held in deciding cases of child custody that the first and permanent consideration is the welfare and interest of the child and not the rights of the parents under a statute.

10. Section 7 of the Family Courts Act, 1984 deals with jurisdiction of the court.

11. Section 7(1) of the said Act provides as under:-

“7. Jurisdiction.-(1) Subject to the other provisions of this Act, a Family Court shall -

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.



Explanation.- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights marriage;
- (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- (d) a suit or proceeding for an order or injunction in circumstances arising out of marital relationship;
- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceeding for maintenance;
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.”

12. Clause (g) of the aforesaid explanation relates to suits or proceedings in relation to the guardianship of the person or the custody of, or access to, any minor.

13. Thus, there is no doubt in my mind that the Family Court has jurisdiction to decide a suit in relation to guardianship of a minor.



14. Sub-section (a) of Section 6 of the Hindu Minority and Guardians Act, 1956 provides that the natural guardian of a Hindu minor, in respect of the minor's person are - in the case of a boy or an unmarried girl-the father and after him, the mother. The proviso to the aforesaid sub-section (a) of Section 6 stipulates that the custody of a minor, who has not completed the age of five years shall ordinarily lie with the mother.

15. As the father of the minor child whose case for custody is sought for in the suit is admittedly posted at Samastipur and the Family Court is the competent court to decide the issue of guardianship, I see no illegality in the impugned order whereby the court at Samastipur has held that it has territorial jurisdiction to decide the suit. The objections raised by the petitioners are without any substance.

16. In that view of the matter, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2019
Transmission Date	NA

