

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 223 of 2019**

- Anjali Agrawal D/o Shri Mahesh Agrawal Aged About 27 Years R/o Village Belganha, Sant Colth Store, Marwadi Mohalla, Tehsil, Kota, District Bilaspur Chhattisgarh. At Present R/o Bisra Road, Raurkela, Orissa

---- Appellant**Versus**

- Sohil Agrawal S/o Shri Nandkishore Agrawal Aged About 29 Years R/o A/1 Parijat Extension, Nehru Nagar, Bilaspur, Tehsil And District Bilaspur Chhattisgarh

--- Respondent

For Appellant : Ms. Sharmila Singhai, Advocate.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****02/08/2019**

Heard on admission.

1. This appeal has been filed by the appellant aggrieved by order dated 19.06.2019, by which, the learned Family Court had rejected the appellant's application under Order 7 Rule 11 CPC.
2. Learned counsel for the appellant would submit that the matrimonial dispute instituted by respondent before the Family Court at Bilaspur, had no territorial jurisdiction to adjudicate upon the same because from the material placed on record by the appellant before the Family Court child resides at a place which is outside the territorial jurisdiction of Family Court at Durg.
3. The learned Family Court had rejected the application stating that this would require evidence.
4. In a recent decision in the case of **Smt. Jyoti Chouhan Vs. Vinay Kumar Chouhan and Another**, decided on 09.07.2019 in FAM No. 42 of 2018, this Court has held that the matter relating to matrimonial residence referable to provision contained in Section 9 Guardians & Wards Act, 1890 requires proper adjudication. The Supreme Court in the case of **Ruchi Majoo Vs. Sanjeev Majoo**, (2011) 6 SCC 479 emphasized upon inquiry on this aspect as below:

“24. It is evident from a bare reading of the above that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the “ordinary residence” of the minor. The expression used is “Where the minor ordinarily resides”. Now whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact. It may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question of law, capable of being answered without an enquiry into the factual aspects of the controversy.”

5. We do not think that learned Court below has committed any illegality. It is, however, made clear that learned Family Court shall frame specific issue on this aspect and after allowing the parties to lead evidence, shall decide the issue with regard to territorial jurisdiction.
6. The appeal is accordingly disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge