

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 238 of 2018**

- Ritesh Patkar @ Nobel Patkar S/o Omprakash Patkar Aged About 35 Years R/o Near Reliance Tower, Tulshi Nagar (Behind Krishna Nagar), Gudiari, Raipur, Tahsil And District - Raipur, Chhattisgarh. --- (Plaintiff), Chhattisgarh

---- Appellant**Versus**

1. Gayatri Namdev D/o Chandra Prakash Namdev Aged About 31 Years Through Pankaj Namdev, R/o Near Devkripa Hospital, New Rajdhani Motor Driving School, Shankar Nagar, Raipur, Tahsil And District - Raipur, Chhattisgarh.--- (Defendant No. 1), District : Raipur, Chhattisgarh
2. Pankaj Namdev S/o Chandra Prakash Namdev Aged About 31 Years R/o Near Devkripa Hospital, New Rajdhani Motor Driving School, Shankar Nagar, Raipur, Tahsil And District - Raipur, Chhattisgarh.--- (Defendant No. 2)
3. Chandra Prakash Namdev R/o Kurmipara, Beside Ram Mandir, Mahasamund, District - Mahasamund, Chhattisgarh.--- (Defendant No. 3)

---- Respondents

For appellant	: Shri Hemant Gupta, Advocate
For Respondents	: Shri Pawan Kumar Kashyap, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Rajani Dubey****Order On Board****Per Rajani Dubey, J.****26/02/2021**

Appellant is aggrieved by the judgment and decree dated 18.04.2018 passed by the First Additional Principal Judge, Family Court, Raipur, in Civil Suit No. 73/2017, whereby the application filed

by the appellant under Section 10 of the Guardians and Wards Act was dismissed by the Family Court for want of jurisdiction.

2. Brief facts of the case are that the appellant and respondent No.1 are residents of District Raipur and as a couple they had lastly resided at Raipur. Their marriage was solemnized on 22.04.2008 in accordance with the Hindu rites and customs and out of their wedlock one daughter namely Suhani was born on 27.03.2009. Their marriage was dissolved by the competent Family Court on 26.04.2017 and since then they are residing separately. Appellant filed application under Section 10 of the Guardians and Wards Act before the Family Court, Raipur for the custody of his daughter which was rejected by the learned Family Court for want of jurisdiction. Learned Family Court after hearing both the parties, observed that viewed from any angle, found that the minor was residing at Bhopal therefore, it had no jurisdiction to entertain the petition filed for custody of the minor and rejected the same. It is this finding of the Court below, which is under challenge in this appeal.

3. Learned counsel for the appellant submits that the appellant has filed the application on sound reasons and documents in this respect have also been filed but the learned Family Court rejected his application merely on hyper technical reasons therefore the impugned order is bad in the eye of law. He submits that the Court below ought to have seen that the appellant being natural guardian, is entitled to file an application. He submits that the trial court ought to have considered the application of the appellant with a reasoning that the minor was given interim custody to respondent No.2 who is the uncle

and resides at Raipur. He further submits that the couple resided at Raipur as husband and wife and after filing of the suit, the minor is residing with her uncle at Raipur thus, the impugned order deserves to be set aside. He submits that the trial court should have decided the application on merits rather it has decided the case on petty issues, which were false and fabricated and the impugned order is against the well settled principle of natural justice. He submits that the learned Family Court ought to have considered that respondent No.1 and his daughter both were residing at Raipur and that the marriage got dissolved on the ground of adultery. He submits that the court below has given the interim custody of the child to the respondent No.2 at Raipur and thus, it is clear that at the time of pendency of earlier suit, false grounds have been created that the respondent No.1 was found missing and not traceable therefore the impugned order is liable to be set aside. Lastly, he submits that the appellant may be given one opportunity to adduce his evidence on merits of the case and his case may be restored to its original number in the interest of justice.

4. On the other hand, learned counsel for the respondents supported the impugned order.

5. Heard counsel for the parties and perused the material on record.

6. As can be gathered from the material placed on record before this Court, It is clear from the order dated 18.04.2018 that the learned trial court conducted preliminary enquiry regarding the whereabouts of the minor and the findings of the court below is based on the report of the PS Civil Lines, Raipur and PS Kotwali,

Mahasamund. It shows that minor Suhani is residing at D/6, Rajharsh Colony, New Purana Colar Road, PS T.T. Nagar, Bhopal (MP) and therefore the court below dismissed the suit of the appellant for want of jurisdiction.

7. Section 9 of the Guardians and Wards Act reads as under:

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.

8. This Section makes a specific provision as regards the jurisdiction of the court to entertain a claim for grant of custody of a minor. The solitary test for determining the jurisdiction of the court under Section 9 is the “ordinary residence” of the minor. The expression used is “where the minor ordinarily resides”.

9. Thus, it can be seen that initially the dispute was decided by the court where the minor was originally residing. The finding of the trial court is based on the report filed by the Police Station Civil Lines,

Raipur. In the aforesaid circumstances, we see no ground to interfere with the finding of the lower court that the minor child was not ordinarily residing within the territorial limits of jurisdiction of that court and that it had no jurisdiction to try the case. We, therefore, hold that the learned trial Court has not committed any illegality or infirmity in the order impugned.

10. In view of the above, this appeal is accordingly dismissed as the suit was not maintainable at Raipur.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Rajani Dubey)
Judge