

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**GUARDIANSHIP PETITION NO. 16 OF 2018
WITH
INTERIM APPLICATION (L) NO. 5266 OF 2021
WITH
MISC.APPLICATION NO. 4 OF 2018**

Ashu Khurana Dutt

...Petitioner

vs.

Aneesha Ashu Dutt

...Respondent

Mr. Shanay Shah i/b. Sapana Rachure for Petitioner.

Mr. Santosh Paul, Senior Advocate with Pradip Chavan, Mahir Bhatt and Manan Sanghai i/b. Wasim Ansari for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 1 APRIL 2021

ORAL ORDER :

Heard learned Counsel for the parties.

2 This guardianship petition is filed purportedly under Sections 6 and 11 of the Hindu Minority and Guardianship Act, 1956. Prayer clause (a) of the petition seeks appointment of the Petitioner, who is the father of the two minors for whose guardianship the present petition is filed, as the guardian of the person of the minors. Secondly, it seeks reliefs concerning the property of the minors, particularly a declaration that the Respondent mother has unauthorisedly and fraudulently withdrawn or transferred amounts from the bank accounts of the minors for her personal use and benefit [prayer clause (aa)] and an order for recovery of these amounts either by making payment to the Petitioner as their natural guardian or by

depositing the same in the bank accounts of the minors [prayer clause (b)].

3 In the first place, the main prayer in the petition, prayer clause (a), which is for appointment of guardian of the person of the minors, is not maintainable before this court. Section 7 read with Section 8 of the Family Courts Act reserves exclusive jurisdiction to entertain a suit or proceeding in relation to guardianship of the person of any minor unto Family Courts by virtue of Clause (f) of the Explanation to Sub-section (1) of Section 7. A Full Bench of this court, in the case of **Romila Jaidev Shroff vs Jaidev Rajnikant Shroff**¹, has held so. The Full Bench has observed that in view of the provisions of the Family Courts Act, the court exercising its ordinary original civil jurisdiction relating to matters under the Family Courts Act would lose its jurisdiction to the Family Court, since the former would be a district court and under Section 17 of the Family Courts Act that Act would have an overriding effect. In view of the Full Bench decision of this court, which was referred to, and the proposition of law set out wherein was reiterated, by a learned Single Judge of this court in the case of **Girish J. Bobade vs. Ajay Thakur**², the matter does not admit of any controversy. An application for guardianship of the minor's person can lie only before the Family Court.

4 Coming now to the other substantive prayers of the petition, namely, prayer clauses (aa) and (b), it is pertinent to note that an application for a declaration about the property of a minor, which is said to be fraudulently or unauthorisedly transferred, and an order for recovery of that property cannot lie in a guardianship petition independently of any claim for being appointed as a guardian of the person or property of a

1 2003(3) Mh.L.J. (FB) 468

2 2006(2) Mh.L.J. 702

minor. As noticed above, for appointment as a guardian of the person of the minors, the present petition is not maintainable before this court and, as for guardianship of the minors' property, there is no prayer in the present petition. Any application for appointment of a guardian on the basis of natural guardianship of a minor under Section 6 of the Hindu Minority and Guardianship Act, 1956 has to be made in accordance with the provisions of Guardians and Wards Act, 1890. The procedure for appointment of a guardian of either the person or property of a minor is provided under Section 7 of the Guardians and Wards Act. Even for permission to deal with the property of the minor, the natural guardian has to apply to a court under Sub-section (2) of Section 8 of the Hindu Minority and Guardianship Act, by invoking the provisions of Guardians and Wards Act. This scheme of law indicates that what lies before a court, other than a family court under Section 7 of the Family Courts Act, is an application for appointment of guardian of the property of a minor or an application for permission to deal with such property. It is only these applications which are made by means of a guardianship or a miscellaneous petition before this court. It is another matter that in such petition, filed for either of these two reliefs, other ancillary reliefs concerning the property of the minor may be prayed for, but no substantive petition can possibly lie simply for such ancillary reliefs without praying for either of the two main reliefs as the main prayer. It is not in dispute that the present application seeks neither of these two reliefs.

5 It is submitted by the Petitioner that under Section 11 of the Hindu Minority and Guardianship Act, no person is entitled to dispose of or deal with the property of a Hindu minor merely on the ground of his or her *de facto* guardianship of the minor. The Act, however, does not provide for

any application for the sole relief of perpetual injunction or recovery of the minor's property dealt with contrary to Section 11 to be made by way of a guardianship petition. The injunction against a *de facto* guardian for dealing with the minor's property has been provided for in the Hindu Minority and Guardianship Act concomitantly with the powers to be exercised by the natural guardian for dealing with the minor's estate or property in accordance with Section 8, which, as we have noted above, provides for seeking of a permission of the court to deal with such estate or property. But that does not mean that relief in enforcement of such injunction can be sought in a guardianship petition under that Act. Such relief can only be sought in an ordinary suit by the next friend or guardian appointed of the minor.

6 Alternatively, it is the Petitioner's case in the present petition that the bank accounts were created and monies were deposited into them for the sake of ensuring the minors' pursuit of education and that these amounts, meant for the minors' education, were illegally withdrawn by the Respondent mother from their respective accounts and that these need to be brought back for the benefit and welfare of the minors. If the petition is sought to be framed as a petition for making provision for maintenance of the minors *inter alia* by seeking to recover the amounts illegally withdrawn by the Respondent wife, it would obviously be an application in the nature of a proceeding for maintenance. Such application, being covered by clause (f) of the Explanation to Sub-section (1) of Section 7 of the Family Courts Act, would also lie exclusively before the Family Court.

7 Having regard to the foregoing narration, in either event, this court has no jurisdiction to entertain the present petition as framed.

Accordingly, the guardianship petition is dismissed.

8 It is made clear that whilst dismissing the petition, this court has only taken into account the aspect of jurisdiction and not considered other aspects reflecting on the merits of the application. These may well be urged by the respective parties as and when any application is moved before the appropriate court, including the Family Court, for reliefs claimed in the present petition.

9 In view of the disposal of the main petition, the miscellaneous application and the interim application taken out therein do not survive and are disposed of.

(S.C. GUPTE, J.)