



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2021

(Reserved on 10.03.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

CRP(MD)No.400 of 2021

J.Beula Sima Saral

... Petitioner/Petitioner

vs.

W.Issac Robinson

... Respondent/Respondent

Petition filed under Article 227 of the Constitution of India, to direct the Hon'ble Family Court (District Judge) Kanyakumari District at Nagercoil to number the G.W.O.P.SR.399/2020 (Filing No.OP/127/2020) and take up the same for hearing on merits.

For Petitioner : Mr.K.Vamanan

ORDER

Where the minor ordinarily resides is the jurisdiction contemplated under Section 9 of the Guardians and Wards Act, 1890. Section 9 reads as under:-

''9. Court having jurisdiction to entertain application.

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(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.''

2.The petition filed under Sections 7, 9 and 17 of the Guardian and Wards Act, 1890 is by the mother of the minor child Jafferson Peter Robinson aged 11 years born on 09.09.2006 between the petitioner and the respondent. The relief sought for by the petitioner is to declare the petitioner as the natural guardian of the minor son and to hand over the personal custody of the minor to



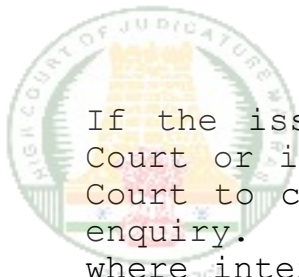
the petitioner. This petition has been returned by the Family Court on the ground that it lacks territorial jurisdiction to entertain the petition. Challenging the same, this revision petition has been filed.

3.The learned counsel for the petitioner would state that in Column (v)(a), of the original petition, the petitioner has mentioned the ordinary place of the ward at No.3/29, Alagar Konam, Kanniyakumari Village, Nagercoil, Agasteeswaram Taluk, Kanyakumari District. In the cause of action paragraph also it is stated as the minor child has been taken away by the respondent by the petitioner. In paragraph 11 of the original petition, it is stated as the respondent left India during the year 2014 along with the petitioner and two children thereby impliedly saying that they had been residing in India till 2014.

4.The word 'ordinarily resides' includes mere temporary residence even though it will be of such temporary residence as may be considerable. It will be relevant to quote the interpretation given by the Punjab and Haryana High Court in the decision in **Sunaina Chowdhary vs. Vikas Chowdhary (FAO.No.3860 of 2011 (O&M), dated 02.05.2012** and it would be relevant to extract below paragraph 30 of the order:-

'30.However, in a case where the court decides to exercise its jurisdiction summarily to return the child to his own country, keeping in view the jurisdiction of the court in the native country which has the closest concern and the most intimate contact with the issues arising in the case, the court may leave the aspects relating to the welfare of the child to be investigated by the court in his own native country as that could be in the best interests of the child. The indication given in *Mckee v. Mckee*, 1951 AC 352 that there may be cases in which it is proper for a court in one jurisdiction to make an order directing that a child be returned to a foreign jurisdiction without investigating the merits of the dispute relating to the care of the child on the ground that such an order is in the best interests of the child has been explained in *L (Minors)*, In re, (1974) 1 WLR 250 and the said view has been approved by this Court in *Dhanwanti Joshi v. Madhav Unde*, (1998)1 SCC 112. Similar view taken by the Court of Appeal in *H. (Infants)*, In Re, (1996) 1 WLR 381, has been approved by this Court in *Elizabeth Dinshaw v. Arvand M. Dinshaw*, (1987)1 SCC 42.'

5.In the light of the above decision, in the interest of justice, I direct the learned Judge, Family Court, Kanyakumari District at Nagercoil, to take the case in G.W.O.P.SR.399/2020 (Filing No.OP/127/2020) on file subject to the proof that would be adduced to show that the child was ordinarily residing as contemplated under Section 9 of the Guardians and Wards Act, 1890.



If the issue relating to jurisdiction is doubtful for the Family Court or if it is raised by the respondent, it will be open to the Court to consider the same in the light of evidence offered during enquiry. The Guardians and Wards Act, 1890, was of the year 1890 where inter-country marriages or foreign marriages were not even in contemplation. As on date, those kind of marriages are innumerable happening each and every day. The law should take a lien matching the changes happening in the society. If the law is lacking behind, the rights of the parties will also lack behind. Therefore, it is the time for the Legislature to take note of the above types of marriages and taking into account the interest of the children, may redefine the jurisdiction of the Family Court, so that neither the children nor the person interested in the welfare of the children shall suffer.

6. With the above observation and direction, this Civil Revision Petition is allowed. No costs. Registry is directed to return the original GWOP petition to the learned counsel for the petitioner after getting attesting copies of the same.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The District Judge,
Family Court,
Kanyakumari District
at Nagercoil.

Copy to

The Section Officer, E.R. Section
Madurai Bench of Madras High Court, Madurai

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DATED : 03.08.2021

SAR(CO)
LR(10.08.2021) 3P 3C