

07.04.2022
Ct. 21 D/L 7

C.O. 1676 of 2021
With
CAN 1 of 2021
Oindrila Bhaumik
-Vs-
Arijit Das.

Mr. Gautam Chakraborty,
Mr. Pulak Kr. Roy,
...for the petitioner
Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee,
Mr. Devdutta Pathak,
.... for opposite party

Parties are represented by their respective advocates.
The application under section 24 C.P.C filed by mother of the minor child for transfer of ACT VIII Case No.75 of 2021 from the Court of learned District Judge, Alipore to the Court of learned District Judge, Berhampore, Murshidabad.

From the argument advance by learned advocate for the parties and from the materials on record it appears the petitioner and opposite party were married under Special Marriage Act, 1954 and their marriage was registered at Sagarpara, Jalangi, Murshidabad on 10.7.2012. They were blessed with a male child on 10.07.2014. That due to matrimonial discord the petitioner wife appears to have left the matrimonial home situated at Barisha, Thakurpukhur at South 24 Parganas on 10.06.2015 and since then she has been

living in her paternal house at Murshidabad till her second marriage.

That the matrimonial ties between the parties dissolved by virtue of mutual consent divorce dated 17.02.2021 passed by District Judge, Murshidabad in MAT suit no. 220 of 2020. The decree of divorce is silent about the minor child of the parties.

Admittedly, the child since the time of his birth till separation of the parents lived with them in the house where the parents used to live. From the above facts it can be gathered that at the time of separation the child was about a year old and probably a breast feeding child and as such an inference can be drawn such child too left his father's house along with his mother when the mother left the matrimonial home under compulsion or voluntarily in the year 2015. More so, it is admitted fact the child is with his mother and living at his maternal grandparent's house at Sagarpara, Jalangi, Murshidabad and where he is studying in Ananda Marg School at Sagarpara. That in the meantime the marriage between the parents got dissolved by virtue of mutual consent in the month of February 2021 and mother has remarried in the month of March 2021. The petitioner/ mother is residing in her new matrimonial home and she is expecting a child from her second marriage.

It has been alleged by the father the child in question is left in the custody of the parents of the petitioner mother after her second marriage.

On the other hand it has been contended by learned advocate for the petitioner /mother that she has taken the child along with her in her new matrimonial home which is also situated at Sagarpara, Jalangi, Murshidabad, but no actual present address of the mother has come on record. In fact a deed of conveyance which is lying in record shows the petitioner has purchased a flat at Sonarpur in 2018. Therefore, no clear picture has come on record whether the child is with the mother in her new matrimonial home or not. However, the father in his application under Act VIII has admitted the child is residing with his maternal grandparents i.e. with whom he has been living with his mother since 2015.

Be that as it may, by filing application under section 24 C.P.C the petitioner mother want the case under ACT VIII filed by father for the custody and guardianship of the minor child in the Court of the District Judge, Alipore transfer to the Court of District Judge, Berhampore, Murshidabad.

Section 9(1) of the Guardians and Wards Act, 1890 states that if the application for 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. Thus, Section 9 contemplates the territorial jurisdiction of the Court in respect of an application for guardianship of a minor and the only test for determining jurisdiction of the Court is the “ordinary residence” of the minor.

From the facts discussed above it is apparent the minor has been residing with his mother from the date of birth initially at the matrimonial home of his parents and after separation of the parents he has been living with his mother at Sagarpara, Jalangi, Murshidabad. It is true that mother has remarried and she is residing in her new matrimonial home. But from the admission made by the father in his application the child is at present residing with his maternal grandparents in whose house he has been living with his mother since 2015. Therefore, this Court holds that ordinary residence of the minor is at Sagarpara, Jalangi, Murshidabad. More so, it is not the case of the father the mother had stealthy taken the child from his custody when she left the matrimonial home.

In view of provision of Section 9(1) of the Guardians and Wards Act, 1890 the application for guardianship of the person of the minor or for his custody has to be filed before the District Court within whose jurisdiction the minor is ordinarily residing. In the present case the case filed by the father under Act

VIII lies before the District Judge, Murshidabad and not before the District Judge, Alipore.

Therefore, the application under Section 24 filed by the mother is allowed.

Therefore, Act VIII Case No. 75 of 2010 be withdrawn from Court of District Judge at Alipore and be transferred to the Court of learned District Judge at Murshidabad. The learned District Judge Murshidabad, may keep the case in his/ her own file or transfer the same to any other Court having jurisdiction to try and dispose of the same.

The learned District Judge at Alipore shall transfer the records of Act VIII Case No. 75 of 2021 to the Court of the learned District Judge at Murshidabad within a period of 30 days from the date of communication of this order

The parties shall appear before the learned District Judge at Murshidabad on 07.05.2022 irrespective of transfer of the records of the said suit but only on the basis of sever copy of this order.

The learned District Judge at Murshidabad, shall act on such communication.

The transferee Court shall proceed to dispose of the said suit from the stage at which it has already reached.

The transferee Court is further requested to expedite disposal of the said suit in accordance with law.

Accordingly **C.O.1676 of 2021 is disposed of.**

Connected applications are disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied. There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)