

25-08-2022
Item no.161
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.2261 of 2021
Smt. Gita Rani Porel & Anr.
-vs-
Smt. Tumpa Porel

Mr. Debasis Kar
Mr. Subhajit Chowdhury
Mr. Husen Mustafi ...for the petitioners

Affidavit of service filed be taken on record. It appears from the affidavit of service that despite service of notice having been effected on the opposite party, there is no representation on behalf of her. Accordingly, the revisional application is taken up for hearing in the absence of the opposite party.

The petitioners state that the opposite party was married to one Bablu Porel, the son of the first petitioner. Out of their wedlock, a male child named Akash was born. The petitioners allege that Bablu was murdered by some miscreants, and the opposite party has been arraigned as an accused in connection with the murder case. It is stated by the petitioners that the child of the opposite party is now residing with them at Saradanagar, Chandibaria, Newtown, district North 24 Parganas.

The petitioners state that the opposite party has brought a proceeding being Act-VIII Case No.5 of 2019 against them in the court of learned District Judge, Paschim Medinipur. The case of the petitioners is that since the child is staying with the petitioners at the aforesaid address, the Act-VIII case should be tried by the learned District Judge, North 24 Parganas. Hence the prayer.

Since the opposite party has chosen not to contest the s.24 CPC application, the averments made in the application shall be deemed to have been uncontroverted.

The uncontroverted averments in the revisional application supported by affidavit show that the husband of the opposite party has allegedly been murdered. The child of the opposite party has now been staying with the petitioners' residence at the aforesaid address since his childhood. The opposite party has brought the Act-VIII case before the concerned court at Paschim Medinipur.

According to section 9 of the Guardians and Wards Act, 1890, if an 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.

As stated above, the child is now residing with the petitioners at the aforesaid address under the judgship of learned District Judge, North 24 Parganas. Therefore, I am of the view that, in the light of s.9 of the 1890 Act, the aforesaid Act-VIII case should be transferred to the court of learned District Judge, North 24 Parganas.

Accordingly, the revisional application is allowed by the following order.

Let Act-VIII Case No.5 2019 be withdrawn from the court of learned District Judge Paschim Medinipur and the case be transferred to the court of learned District Judge, North 24 Parganas at Barasat for disposal.

Learned District Judge, North 24 Parganas may either dispose of the case himself/herself or transfer the case to any of the competent courts at Barasat for disposal.

Learned District Judge, Paschim Mediniour is directed to transmit the case record of the above-mentioned Act-VIII case to the transferee court immediately after receipt a copy of this order.

Let a copy of this order be communicated to both the learned courts below forthwith.

With the above observations, CO No.2261 of 2021 stands disposed of. No order as to costs.

Certified copy of this order, if applied for, shall be given to the parties.

[Rabindranath Samanta, J]