

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED:17.11.2022****CORAM:****THE HONOURABLE Mr. JUSTICE S.SOUNTHAR****C.R.P.No.3271 of 2022**

Ashok Varadhan Attirala

...Petitioner

Versus

Kudumula Sireesha

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Docket order passed in Original Petition SR.No.1908 of 2022, dated 23.06.2022 passed by the Family Court, Chennai, consequently direct the Family Court, Chennai number the O.P. and decide the matter on merits.

For Petitioner :Mr.S.Shanmuga Velayutham



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O R D E R

The Civil Revision Petition is filed challenging the order of return dated 23.06.2022, passed by the Family Court, Chennai.

2. The petitioner herein, filed a petition under Section 25 of Guardians and Wards Act, 1890, seeking permanent custody of the child by name Ashok Varadhan Attirala. According to the petitioner, the child is presently living with his mother at Cherlopali Village, Manubolu, Andhra Pradesh. On presentation of the petition, the Court below raised objection with regard to the territorial jurisdiction and returned the matter. The petitioner represented the papers by offering his explanation. Not satisfied with the reasons offered by the petitioner, the Court below passed an order dated 23.06.2022 returning the petition on the ground that it has no territorial jurisdiction to entertain the original petition. Aggrieved by the said order of return, the petitioner is before this Court.

3. The learned counsel for the petitioner vehemently contended that merely because the child is temporarily residing at Andhra Pradesh along



with her mother, it cannot be presumed that the child ordinarily resides at Andhra Pradesh.

4. The learned counsel relied on the judgment of this Court dated 08.03.2019 made in application Nos.5445 and 5446 of 2018 in O.P.No.599 of 2018, in support of his contention.

5. Section 9 of Guardian and Wards Act, 1890, which deals with the jurisdiction of the Court, reads as follows:

9. 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.

6. A perusal of the above provision would make it clear that if the petition is in respect of the guardianship of person of a minor, the petition shall be presented before the District Court having jurisdiction in the place, where the minor ordinarily resides. In the case on hand in the petition filed by the petitioner seeking permanent custody of the child it is specifically averred that the respondent is residing at Cherlopali Village, Manubolu, Andhra Pradesh at her parental house along with a minor child viz., Ashok Varadhan Attirala, whose custody is sought for. Therefore, from the averment found in the petition filed by the revision petitioner himself, the minor is residing along with the respondent in her parental home. Therefore, the Court at Chennai has no jurisdiction to entertain the original petition seeking custody of the child who ordinarily resides at Andhra Pradesh outside its jurisdiction.

7. The decision relied on by the learned counsel for the petitioner of this Court is dated 08.03.2019 made in application Nos.5445



and 5446 of 2018 in O.P.No.599 of 2018. This Court while considering the scope of jurisdiction available to this Court under Clause 17 of the Letter patent Act held that this Court has got jurisdiction over the minor, who are residing ordinarily in a place coming within the Madras Presidency. In the said case, the minor, at the relevant point of time, resided at Conoor which also comes within the original Madras Presidency. The petitioner cannot take any support from the above said decision for a simple reason that the present petition seeking custody has been filed by him before the Family Court, Chennai not before this Court. The Family Court, Chennai will have territorial jurisdiction only over the City of Madras, whereas, under Clause 17 of the Letter patent Act, this Court has got jurisdiction over the minors ordinarily resides within the Madras Presidency. Therefore, the decision relied on by the learned counsel for the petitioner is not applicable to the facts of the present case.

8. In view of the discussions made above, I do not find any illegality in the order passed by the Court below returning the original petition filed by the revision petitioner for want of territorial jurisdiction.



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S.SOUNTHAR, J.

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9. Accordingly, the Civil Revision Petition is dismissed. No costs.

17.11.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
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To
The Family Court,
Chennai.

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