



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P.(MD)No.1912 of 2019
and
C.M.P.(MD)No.9743 of 2019

R.Manikandan ...Petitioner/Petitioner/Respondent

Vs.

R.Swathika Devi ...Respondent/Respondent/Petitioner

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to set aside the order passed by the Family Court, Madurai, in I.A.No.528 of 2019 in G.W.O.P.No.13 of 2017, dated 24.09.2019.

For Petitioner :Mr.K.Shanmuga Raja
For Respondent :Mr.J.Bharathan

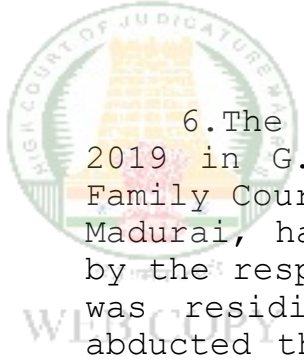
ORDER

This Civil Revision Petition has been filed to set aside the order, dated 24.09.2019 in I.A.No.528 of 2019 in G.W.O.P.No.13 of 2017, passed by the learned Judge, Family Court, Madurai,

2.The parties are referred to as per the rank mentioned before the Court below.

3.The petitioner herein has filed a petition in G.W.O.P.No.13 of 2017, under Section 25 of Guardian and Wards Act, seeking direction to pass an order that the petitioner as natural guardian, is entitled to the permanent custody of the minor child Harishkesh and also sought for a consequential direction to the respondent to hand over the child to the petitioner and allow this petition with costs.

4.During the pendency of the G.W.O.P.No.13 of 2017, the petitioner has also filed a petition in I.A.No.528 of 2019 in G.W.O.P.No.13 of 2017 under Section 9(3) of Guardian and Wards Act, 1890 and Section 151 of Civil Procedure Code, to return the G.W.O.P.No.13 of 2017 on the ground of jurisdictional issue. The said petition was dismissed on 24.09.2019. Aggrieved over the same, the petitioner is before this Court.



6.The revision petitioner has filed a petition in I.A.No.528 of 2019 in G.W.O.P.No.13 of 2017 on the file of the learned Judge, Family Court, Madurai, to question the jurisdiction of Family Court, Madurai, has no jurisdiction to try G.W.O.P.No.13 of 2017 was filed by the respondent/petitioner/wife. As per petition, the minor child was residing with her mother and the petitioner had forcibly abducted the child with him. She has given a complaint before the police which was registered in Crime No.225 of 2014. Again, she has filed a petition in H.C.P.(MD)No.421 of 2014 against her husband. This Court has issued direction to the wife to approach appropriate Forum for getting custody of detinue in the year 2014. The respondent/wife has filed a petition seeking divorce in the year 2015. In which, she has filed a petition for interim custody of the child.

7.As per Judgment reported in ***AIR 1985 SC 577, Abdulla Bin Ali Vs. Golappa and Others***, all the allegations made in the plaint decide the forum, the jurisdiction does not depend upon the defence taken by the defendants in the written statement.

8.As per averments of the petitioner, minor child was residing with her mother and he was forcibly removed by the petitioner.

9.The ingredients of Section 9 of Guardian and Wards Act, is extracted hereunder:

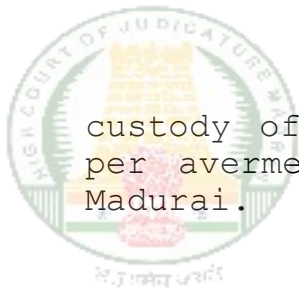
"Court having jurisdiction to entertain application :

(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 be 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"

10.The allegation raised by the petitioner is that the minor child was residing with his wife. He was forcibly removed the



custody of the respondent/wife by the petitioner/husband. So, as per averments in the petitioner, the child ordinarily resides at Madurai.

11. Now, in G.W.O.P.No.13 of 2017, the trial was commenced already and P.W.1 was cross-examined by the revision petitioner. The petitioner has filed proof affidavit for his chief examination. At this stage, the present application was filed.

12. As per Section 21 of Civil Procedure Code, the objection of jurisdiction is to be raised at the first instance. He has also raised in the counter affidavit. But, he has not raised any objected averments till the cross examination of the petitioner/P.W.1.

13. The learned counsel appearing for the petitioner relied upon the Judgment reported in **Mat.Appeal No.1256 of 2017, dated 12.09.2018, Divya J.Nair Vs. S.K.Sreekanth**, held as follows:

...
"3. What is meant by the expression "the place where the minor ordinarily resides" In Section 9(1) of the Act? Does it always mean the ordinary residence of the natural guardian of the minor and no other place? These questions essentially fall for consideration in this case."

14. At this stage, as per petition averments, the minor child was ordinarily residing with his mother. Whether the averments are true or not? and whether the ordinal child was forcibly abducted by the petitioner/father? has to be decided at the time of trial only.

15. It is mixed question of facts. Therefore, it can be decided after trial only.

16. With these observations, this Civil Revision Petition is dismissed by confirming the order, dated 24.09.2019 in I.A.No.528 of 2019 in G.W.O.P.No.13 of 2017, passed by the learned Judge, Family Court, Madurai. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Accounts)

// True Copy //



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To
The Judge,
Family Court,
Madurai.

+1 CC to M/s.K.SHANMUGA RAJA, Advocate (SR-6417[F] dated 16/02/2022)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-6127[F] dated 15/02/2022)

Order made in
C.R.P. (MD) No.1912 of 2019
14.02.2022

PKP/12.03.2022/4P/4C