

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

916 CIVIL REVISION APPLICATION NO.134 OF 2023

Shaikh Sirajoddin @ Sajed s/o
Amiroddin Shaikh @ Mammi,
Age : 36 years, Occu : Service,
R/o : Government Medical College,
MIDC, Baramati, Tq. Baramati,
Dist. Pune.

**...APPLICANT
(Orig.Resp.)**

VERSUS

Asafiya Mehrin w/o Shaikh Sirajoddin,
Age : 28 years, Occu : Household,
R/o swa. Ra. Ti. Parisar, Ambajogai,
Tq. Ambajogai, Dist. Beed.
At present R/o : C/o Kaji Alimoddin
s/o Karimoddin, Barabhai Galli,
Ambajogai, Tq. Ambajogai, Dist. Beed.

**...RESPONDENT
(Orig. Applicant)**

...
Advocate for Applicant : Mr. Ravindra V. Gore
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CORAM : ARUN R. PEDNEKER, J.

**RESERVED ON : 04.08.2023
PRONOUNCED ON : 11.08.2023**

ORAL ORDER :

1. By the present Civil Revision Application, the applicant is challenging the Order dated 05.07.2023 passed by the learned District Judge-3, Ambajogai in Civil M.A. No. 54/2022 filed by the applicant under Section 9 of the Guardianship and Wards Act 1890, whereby the application is rejected, holding that the Court has jurisdiction to

entertain the proceedings initiated by the wife of the applicant for the custody of her minor children under the 1890 Act.

2. Brief facts leading to the filing of the present Revision Application are as under :-

That the respondent -wife of the applicant filed an application under Section 8 of the Guardianship and Wards Act, 1890 before the learned District Judge -3, Ambajogai for custody of her 2 minor children against the Appellant. The custody of both the minor sons is with the applicant and the applicant filed an application under Section 9 of the Guardianship and Wards Act, 1890 for rejection of the Custody Application filed by his wife. The applicant pleaded that the jurisdiction of the Court is ousted as ordinary residence of minors, is at Baramati Maharashtra State which comes within the jurisdiction of the Family Court at Baramati.

3. It is contended by the applicant that both the parents of minors were residing at Baramati and that the applicant is working in Civil Hospital at Baramati as a Lab Assistant. The minor sons are also residing with the respondent and therefore it is not appropriate for the minor to be brought before the District Court at Ambajogai which is more than 700 kms. away. The applicant further contended that

the Court at Ambajogai has no jurisdiction to entertain the application for custody filed by the Respondent / wife as a jurisdiction of the Court is ousted under Section 9 of the Guardianship and Wards Act, 1890.

4. It is the case of the applicant that he was appointed as Lab Assistant on 21.08.2009 at S.R.T. Medical College, Ambajogai. After promotion, applicant has been transferred from Ambajogai to Baramati on 01.12.2020. In view of the official order dated 12.11.2020 passed by Director of Medical Education and Research, Mumbai, the name of applicant is mentioned at Sr.No.114 which would show that, he is transferred on promotion to Government Medical College, Baramati from SRT Rural Government College, Ambajogai. He further submits that his family i.e. respondent and his sons shifted to Baramati on 16.02.2021 and due the lockdown, the children of the applicant and respondent were attending online school, and thereafter started physical school at Baramati. Since 16.02.2021 the applicant is staying at Baramati along with his children.

5. On consideration of the application and the reply, the District Court rejected the application of the applicant under Section 9 of the Guardianship and Wards Act, 1890. The Court held that the

application filed by the wife is with respect to the guardianship of the person of the minor, and it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides. Thereafter, the Court having gone through the pleadings of both the parties, held that the sons and the non-applicant are ordinary resident of Ambajogai. The last incident took place at Ambajogai and the wards ordinarily used to reside with the applicant and respondent at Ambajogai.

6. Heard learned counsel Mr. R. V. Gore for the applicant. He submits that the jurisdiction under Guardianship and Wards Act for the guardianship of the person of minor shall be a place at which the minor ordinarily resides and in the instant case, the minor resides at Baramati and not at Ambajogai.

7. Relevant provisions of Section 8 and 9 of the Guardianship and Wards Act, 1890 reads as under :-

***“8. Persons entitled to apply for order.**—An order shall not be made under the last foregoing section except on the application of—*

(a) the person desirous of being, or claiming to be, the guardian of the minor; or

(b) any relative or friend of the minor; or

(c) the Collector of the district or other local area

within which the minor ordinarily resides or in which he has property; or

(d) the Collector having authority with respect to the class to which the minor belongs”.

“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 of 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.”

8. The Honourable Supreme Court in the case of ***Ruchi Majoo Vs. Sanjeev Majoo, reported in (2011) 6 SCC 479***, has considered the issue of jurisdiction of the Court under the Guardianship and Wards Act 1890. The Hon’ble Supreme Court has held as under :-

24. It is evident from a bare reading of the above that the solitary test for determining the jurisdiction of

the court under Section 9 of the Act is the "ordinary residence" of the minor. The expression used is "where the minor ordinarily resides". Now whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact. It may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question of law, capable of being answered without an enquiry into the factual aspects of the controversy.

26. We may before doing so examine the true purpose of the expression "ordinarily resident" appearing in Section 9(1). This expression has been used in different contexts and statutes and has often come up for interpretation. Since liberal interpretation is the first and the foremost rule of interpretation it would be useful to understand the literal meaning of the two words that comprise the expression. The word "ordinary" has been defined by Black's Law Dictionary as follows:

"Ordinary (adj.). - Regular; usual; normal; common; often recurring; according to established order; settled; customary; reasonable; not characterised by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual."

The word "reside" has been explained similarly as under :

"Reside – Live, dwell, abide, sojourn, stay,

remain, lodge, (Western-Knapp Engg. Co. V. Gilbank, F2d at p.136). To settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile ; specifically, to be in residence, to have an abiding place, to be present as an element, to inhere as a quality, to be vested as a right (Bowden v. Jensen, SW 2d at p.349)".

27. In Webster's Dictionary also the word "reside" finds a similar meaning, which maybe gainfully extracted:

"1. To dwell for a considerable time; to make one's home; live. 2. To exist as an attribute or quality with in. 3. To be vested: with in."

29. In Jagir Kaur v. Jaswant Singh, this Court was dealing with a case under Section 488 CrPC and the question of jurisdiction of the court to entertain a petition for maintenance. The Court noticed a near unanimity of opinion as to what is meant by the use of the word "resides" appearing in the provision and held that "resides" implied something more than a flying visit to, or casual stay at a particular place. The legal position was summed up in the following words: (AIR p. 1524, para 8)

"8. ...Having regard to the object sought to be achieved, the meaning implicit in the words used, and the construction placed by decided cases thereon, we would define the word 'resides' thus: a person resides in a place if he through choice makes it his abode permanently or even temporarily; whether a person has

chosen to make a particular place his abode depends upon the facts of each case"

31. Reference may be made to Bhagyalakshmi v. K. Narayana Rao, Aparna Banerjee v, Tapan Banerjee, Ram Sarup v. Chimman Lal, Vimla Devi v. Maya Devi and Giovanni Marco Muzzu (Dr.), In re, in which the High Courts have dealt with the meaning and purport of the expressions like "ordinary resident" and "ordinarily resides" and taken the view that the question whether one is ordinarily residing at a given place depends so much on the intention to make that place one's ordinary abode.

9. Examining the facts of the present case as reflected from the pleadings of the parties is that the parties are from Ambajogai and the intention of the parties is also to ordinarily reside at Ambajogai, although temporarily, due to the transfer of the applicant, the applicant with his minor sons is at Baramati.

10. It is also the case of the respondent/wife that the children has been forcibly taken from her custody from Ambajogai and made her sign on false document by the applicant / husband. Thus, from the pleadings of the parties and the admission of the applicant that because of his transfer from Ambajogai, they are residing at Baramati, the ordinarily place of residence of the couple along with the minor is

at Ambajogai and thus applying the law as discussed in the case of *Ruchi Majoo (supra)*, the Court at Ambajogai has jurisdiction to entertain the application under Section 8 of the Guardianship and Wards Act, 1890.

11. In view of the above, the present Civil Revision Application is dismissed.

(ARUN R. PEDNEKER)
JUDGE

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shp/-